

**Title 13**  
**PUBLIC SERVICES**

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## Chapter 13.04

### Water Department

#### Sections:

- 13.04.010 Water department created.
- 13.04.020 Board may appoint commissioner of water.
- 13.04.030 Inspection of mains and repairs—Notice required.
- 13.04.040 Commissioner of water to inspect—Record to be maintained.
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- 13.04.090 Use of water suspended in case of fire.
- 13.04.095 Waste of water prohibited.
- 13.04.100 Power of board of trustees.

#### **13.04.010 Water department created.**

A water department of the town is created and established, subject to such rules and regulations as may be from time to time prescribed by the board of trustees of the town. (Ord. 246 §157, 1988; prior code §13-1)

#### **13.04.020 Board may appoint commissioner of water.**

The town board may appoint a commissioner of water who shall, under direction of the board, carry out the policies, rules and regulations of the water department. (Ord. 246 §158, 1988; prior code §13-2)

#### **13.04.030 Inspection of mains and repairs--Notice required.**

All work done in the laying of service pipes and in making connections with the mains or repairs thereto, shall be left open for the inspection of the commissioner of water or other person designated by the board, and notice shall be given at the time such work is completed and a reasonable time allowed for his examination. (Ord. 246 §159, 1988; prior code §13-3)

#### **13.04.040 Commissioner of water to inspect--Record to be maintained.**

It shall be the duty of the commissioner of water, the town clerk, or the person designated by the board of trustees to superintend, inspect, reject or accept all connections made with the mains and all service pipes, and to see that the provisions of this chapter are complied with therein, to inspect the premises on which and the buildings for which water may be furnished, to keep a correct account of all expenditures made by him, and an inventory of all property in his hands belonging to the town, and the disposition thereof, to keep a book of accounts showing what applications for permits to tap the mains have been issued. (Ord. 246 §160, 1988; prior code §13-4)

#### **13.04.050 Right of inspection.**

The commissioner of water, or any person so authorized by the board of trustees, shall have the right at all reasonable hours, to have full and free access to all parts of premises and buildings where water is delivered

or consumed, to examine the water pipes and fixtures, to examine whether there is any unnecessary waste of water, and as to the use made of the water, and upon his demand, the owner, lessee, or occupant shall be required to fix all leaky pipes or faucets on the property to the satisfaction of the board of trustees. (Ord. 246 §161, 1988; prior code §13-5)

**13.04.060 Separate connection required.**

Each water user in the town shall have a separate connection from the water main of the town water system. It is unlawful for any person to supply water to the occupant of any property which is not connected with the water system, unless so ordered by the board of trustees. (Prior code §13-6)

**13.04.070 No damages for failure to supply.**

Neither the Town, nor any officer, employee or agent of the Town, shall be liable to any person or entity, including but not limited to any consumer of water or any beneficiary of water, by reason of provision of such water or the failure of such supply by the Town, or accident to the water system, or any damage approximate, consequential or remote by reason of the water system or its components. (Ord. 246 §162, 1988; prior code §13-7)

**13.04.080 Interruption of services – No damages.**

The Commissioner of Water shall have the right at any time without notice to shut off the water in the Town mains, or any of them, for the purpose of making repairs, connections, extensions or for other useful or necessary purposes, including the right to shut off water for a breach or violation of any provision of this part. No water user or property owner shall be entitled to any damages or to have any portion of payment refunded for any interruption of water supply however the same may be occasioned. Neither the Town, nor any officer, employee or agent of the Town shall be liable to any person or entity, including but not limited to, any consumer of water or any beneficiary of water, for any interruption of water supply. (Ord. 246 §163, 1988; prior code §13-8)

**13.04.085 Water service restrictions.**

In case of water shortage, scarcity or emergency, the Board of Trustees shall have the power and authority to establish by resolution any restrictions deemed necessary upon the use of water for nondomestic purposes, including but not limited to irrigation. (Ord. 644 §1, 2007)

**13.04.090 Use of water suspended in case of fire.**

In case of fire in the Town, or in case of the sounding of the fire bell, it is unlawful for any person to open or permit to remain open on his or her premises, any hydrant or connection with the water main, for the purpose of irrigation, sprinkling or power, from the time the alarm is sounded until such fire shall be extinguished. (Prior code §13-9)

**13.04.095. Waste of water prohibited.**

A. Wasting of water is prohibited and all consumers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. Hose bibs, hydrants, urinals, water closets, bathtubs and other openings must not be left running for any purpose other than the use for which they were intended.

B. Any consumer, user or other person violating any provision of this Section or of any resolution of the Board of Trustees adopted pursuant to Section 13.04.085 shall be guilty of a municipal offense and shall be punished by a fine but not imprisonment. The amount of such fine shall be determined by the Municipal Court. Upon a second and each subsequent conviction for such an offense, and in addition to such fine, the Town may discontinue water service to the property served, or the Town may install a flow restriction device upon the service line to the property served to limit water service to that necessary for health and sanitary purposes only. No such discontinuance of or restriction upon water service shall extend for more than ten days for each conviction. At least ten days' notice and an opportunity to be heard before the Town Manager shall be given prior to each discontinuance or restriction of water service pursuant to this Section.

C. Watering or irrigating at any time or in any manner prohibited by a resolution of the Board of Trustees adopted pursuant to Section 13.04.085 shall constitute prima facie evidence of waste of water. (Ord. 731 §3, 2010; Ord. 712 §1, 2009; Ord. 644 §2, 2007)

#### **13.04.100 Power of Board of Trustees.**

The Board of Trustees shall have the power and authority to make, change or revise rates and charges for the use of water, to make rules and regulations consistent with the provisions of this Chapter and to take and direct all steps and proceedings fully to carry out the intent and purpose of this Chapter. (Ord. 246 §164, 1988; prior code §13-10)

### **Chapter 13.08**

#### **Water Charges and Rates**

##### **Sections:**

- 13.08.010 Water connection charges.
- 13.08.020 Water service charges.
- 13.08.030 Service charge outside Town limits.
- 13.08.040 Collection procedures – Late fee.
- 13.08.050 Funds collected paid to Treasurer.
- 13.08.060 Shut-off for nonpayment.
- 13.08.070 Time limitation on tapping.
- 13.08.080 Charges for water service reinstatement.
- 13.08.090 Charge for service calls after hours.
- 13.08.100 Charge for service when meters are read for the first time after estimations.
- 13.08.110 Deposits.

#### **13.08.010 Water connection charges.**

A. There is imposed a capital investment charge, repair charge and connection charge for residential, commercial and industrial uses, payable upon issuance of a building permit by the Town. Such charges shall be paid to the Town in an amount as established from time to time by resolution of the Board of Trustees.

B. In addition to the charges set forth in Subsection A above, there shall be transferred to the Town the following:

1. For each single-family residential dwelling lot, the number of acre-foot units of Colorado Big Thompson ("CBT") water as set forth in the following table and as set forth in Paragraph 6 below:

<i>Lot Size (ft<sup>2</sup>)</i>	<i>CBT Share Dedication</i>
0—10,000	1.0
10,00—12,500	1.25
12,50—15,000	1.50
15,00—17,500	1.75
17,50—20,500	2.0
20,50—23,000	2.25
23,00—25,500	2.50
25,50—28,000	2.75
28,00—30,500	3.00
30,50—33,000	3.25
33,00—35,500	3.50
35,50—38,000	3.75
38,00—41,000	4.00
41,00—43,500	4.25

For lots that are fifteen thousand square feet or larger, the Town may in its sole discretion agree to reduce the water dedication requirements by an appropriate amount where: (a) irrigated areas on the lot will be limited to a maximum square footage that does not exceed a specified square footage or specified percentage of the lot area; (b) the corresponding final plat and final development plan contain restrictions on the square footage of irrigated areas, and associated restrictions on water use; (c) the associated covenants contain restrictions on the square footage of irrigated areas; and (d) such restrictions and covenants run in favor of and are enforceable by the Town, with the Town's enforcement rights to include, without limitation, the discontinuance of water service or installation of flow restriction devices at the expense of the landowner in the event of noncompliance.

1.5. One-half acre-foot of CBT water for each living unit in a duplex, triplex, fourplex or larger building used for multi-family dwellings, as set forth in Paragraph 6 below.

2. Two and one-half acre-foot units of CBT water for every acre of irrigated landscape area to be served by the Town water system and located within the development.

3. For commercial, industrial or other nonresidential development, an amount of water equal to the estimated total annual potable water demand requirement for such uses, as calculated by the Town, plus an additional twenty percent.

4. In the sole and absolute discretion of the Board of Trustees and in lieu of acre-foot units set forth in Paragraphs 1, 2 and 3 above, an amount equivalent to one hundred ten percent of the then-current purchase price of such units as determined by the Town. The Town shall set these funds aside for future purchase of acre-foot units of CBT water.

5. The transfer required by this Subsection shall be made prior to the recording of any subdivision plat for the property served. If no subdivision plat is required, then such water shall be deliverable at the time of building permit and shall be transferred to the Town prior to the issuance of a building permit. All water transferred thereunder shall be free and clear of liens and encumbrances.

6. Effective January 3, 2008, the water dedication requirements of Paragraphs 1, 2 and 3, above, shall be satisfied by a combined dedication of water rights and payment of cash in lieu of dedication at the ratio of seventy-five percent dedication and twenty-five percent cash-in-lieu payment. The cash-in-lieu payment shall be made at a rate as determined by the Board of Trustees from time to time by resolution to be equivalent to one hundred ten percent of the then-current purchase price of such units. The Town shall set these cash-in-lieu funds aside for future purchase of CBT units or other water rights.

C. There shall be a limit on the number of living units allowed per tap size in residential units as follows:

<i>Meter Size</i>	<i>Number of Units</i>
5/8"	1
3/4"	2—4
1"	5—6
1½"	7—12
2"	13—23

D. No water tap or connection shall be made to the Town water system unless a permit is first obtained from the Town Clerk for such tap or connection and all applicable charges set forth in this Chapter have been paid. All fees and charges shall be paid at the time of the issuance of the building permit at the then effective rate.

E. All connections or taps shall be made by a licensed plumber and shall be at the sole expense of the applicant. The applicant shall furnish at its sole expense all materials and labor necessary for the tap or connection, except that the Town shall furnish the necessary water meter, the price of which is included in the fee set forth in Subsection A above, and except that the Town shall also furnish the necessary meter pit, meter pit cover, radio read meter, setter(so) and, where applicable, pressure reducing valves, the actual costs of which shall be paid to the Town by the applicant at the time of payment of the capital investment charge. The Town Clerk shall maintain and make available upon request the estimated costs of these components.

F. All connections or taps shall be made in conformance with the specifications as may be promulgated by the Board of Trustees and shall be made under the supervision of the building inspector, or other designee of the Board of Trustees.

G. After such tap or connection is made and accepted, the Town shall be the owner of and shall maintain the line from the water main to the meter, and the applicant shall own and maintain the line from the meter to the premises.

H. Each irrigation system for a private residential lot or commercial landscape area that is installed after April 25, 2003 shall include an automatic electromechanical interrupt which engages to interrupt the irrigation system during a rainfall event. Such device shall be a Hunter model Rain-Click or similar device approved by

the Department of Public Works. The installation of such device shall be a condition of the issuance of the tap serving the irrigation system, and installation shall be completed prior to commencing use of the tap.

I. Each irrigation system for a public or private park or open space area that is installed after April 25, 2003 shall include an automatic electromechanical interrupt which engages to interrupt the irrigation system during a rainfall event or during wind speeds in excess of 10 mph. Such device shall be a Hunter model Rain-Clik or similar device approved by the Department of Public Works. The installation of such device shall be a condition of the issuance of the tap serving the irrigation system, and installation shall be completed prior to commencing use of the tap. (Ord. 785 §2, 2011; Ord. 762 §2, 2010; Ord. 661 §2, 2007; Ord. 520 §2, 2003; Ord. 466 §2, 2001; Ord. 413 §1, 1999; Ord. 387 §1, 1998; Ord. 323 §1, 1996; Ord. 286 §2, 1991; Ord. 230 §1, 1986; Ord. 213 §1, 1985; Ord. 181 §1, 1982; Ord. 140 §1, 1980; Ord. 129 §1, 1979; prior code §13-11)

**13.08.020 Water service charges.**

There are imposed and charged rates and rentals for the use of water measured through a meter, per month, from any of the water lines, water mains or water system of the Town, to be paid to the Town in an amount as established from time to time by resolution of the Board of Trustees. There are further imposed and shall be paid to the Town for other services and activities of the water utility such fees, tolls and charges as are established from time to time by resolution of the Board of Trustees, including without limitation a water disconnection fee, meter tamper fee, meter jumper (bypass) fee, return payment fee and a meter test fee. (Ord. 764 §6, 2010; Ord. 323 §2, 1996; Ord. 284 §1, 1991; Ord. 228 §1, 1986; Ord. 217 §1, 1986; Ord. 188 §1, 1982; Ord. 174 §1, 1981; Ord. 162 §1, 1981; Ord. 133 §1, 1980; prior code §13-12)

**13.08.030 Service charge outside Town limits.**

There shall be assessed and charged for each license or permit for the use of water outside the limits of the Town, an amount or amounts as determined by resolution of the Board of Trustees. (Prior code §13-13)

**13.08.040 Collection procedures – Late fee.**

A. Water charges shall be due no later than the close of business on the twentieth day of the month in which the water billing is mailed to the customer. If the charges remain unpaid at the close of the business day on the last business day of the month, the account shall be deemed delinquent and interest shall be assessed at the rate of one and one-half percent per month. A late fee of five dollars shall also be assessed on overdue amounts of twenty dollars or more.

B. A shut-off notice shall be given to each water customer who is delinquent and water service shall be terminated for the water customer receiving such shut-off notice after ten days from the date of notice unless:

1. The delinquent bill, including interest, is paid prior to the expiration of ten days; or
2. The customer has appeared before the Town Clerk and shown good cause why the charges are not due within the ten-day time period.

C. All water service and connection charges shall be charged against the owner of the property served, shall be a lien upon the respective lots or parcels of land where the water is used from the time when due, and shall be a perpetual charge against the lots or parcels until paid. In the event said charges shall not be paid when due for property within the Town limits, the Town Clerk shall certify such delinquent charges to the

County Treasurer and the charges shall be collected in the same manner as though they were part of the taxes. (Ord. 606 §1, 2006; Ord. 592 §1, 2005; Ord. 571 §7, 2005; Ord. 224 §1, 1986; prior code §13-44)

**13.08.050 Funds collected paid to Treasurer.**

All money collected for water rentals by the Town Clerk shall be paid to the Town Treasurer and kept in a fund designated by the Board of Trustees. (Prior code §13-15)

**13.08.060 Shut-off for nonpayment.**

The proper officials of the Town are given power and authority to enter upon the premises of any consumer who shall have failed to pay his or her water rent, and shut off the water as in their judgment they deem necessary. (Prior code §13-16)

**13.08.070 Time limitation on tapping.**

A. Each water tap permit issued by the Town pursuant to this Title shall expire one hundred eighty days after the issuance of the permit unless the tap applied for has been physically made during the one-hundred-eighty-day time period and unless the construction of the premises for which the tap has been issued has been commenced.

B. The holder of any water tap permit may apply for an extension of the one-hundred-eighty-day time period. Extensions may be granted only by the Board of Trustees of the Town for good cause established by the permit holder. Any extension shall be limited in time to an additional one-hundred-eighty-day period and only one extension shall be granted for any particular tap.

C. If a water tap permit expires, all charges paid to the Town to serve the permit to the applicant shall be forfeited and are nonrefundable. (Ord. 140 §2, 1980; prior code §13-17)

**13.08.080 Charges for water service reinstatement.**

If the water supply to any premises served by the Town is shut off pursuant to the Code of the Town because of the failure of the owner, lessee, renter, user or possessor of the premises to abide by the provisions of the Code, a charge in the amount established from time to time by resolution of the Board of Trustees shall be paid before the water supply is restored. (Ord. 764 §7, 2010; Ord. 571 §8, 2005; prior code §13-18)

**13.08.090 Charge for service calls after hours.**

Any person who requests, in connection with water service, a service call, by Town personnel before or after normal business hours as established from time to time by the Board of Trustees of the Town, shall be charged an after-hours service call charge in the amount established from time to time by resolution of the Board of Trustees. (Ord. 764 §8, 2010; Ord. 284 §2, 1991)

**13.08.100 Charge for service when meters are read for the first time after estimations.**

All usage in excess of five thousand gallons for the first reading after meters have been estimated will be charged at the lowest increment as referred to in Section 13.08.020 of this chapter. (Ord. 286 §1, 1991)

### **13.08.110 Deposits.**

A refundable deposit, payable upon application for water service, is required as a condition of providing water service to any customer. The required deposit shall be in an amount determined by the board of trustees from time to time by resolution. No interest shall accrue to the customer on such deposit and the deposit shall not prevent shut-off for nonpayment pursuant to the provisions in this chapter. Upon disconnection of water service or closure of the customer's account, the customer may request the deposited funds be applied to unpaid bills, late fees and interest owed on the account, or, if no amount is outstanding on the account at the time of disconnection or account closure, the deposit will be refunded in full to the customer. (Ord. 663 §1, 2007)

## **Chapter 13.10**

### **Water Activity Enterprise**

#### **Sections:**

- 13.10.010 Definitions.
- 13.10.020 Establishment of enterprise.
- 13.10.030 Governing body.
- 13.10.040 Maintenance of enterprise status.
- 13.10.050 Issuance of bonds.

#### **13.10.010 Definitions.**

As used in this chapter, unless the context otherwise requires:

A. "Grant" means the cash payment of public funds made directly to a municipal activity enterprise by the state or a local governmental entity or district, including the town, which cash payment is not required to be repaid. "Grant" does not include public funds paid or advanced to a municipal activity enterprise by the state or local governmental entity or district, including the town, in exchange for an agreement by a municipal activity enterprise to provide service including the provision of water, the capacity of project works, materials or other water activities; nor does "grant" include refunds made in the current or next fiscal year, gifts, any payments directly or indirectly from federal funds or earnings on federal funds, collections from another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards or property sales.

B. "Water activity" shall be defined as set out in Section 37-45.1-102, C.R.S.

C. "Water activity enterprise" means that water activity business wholly owned by the town which receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this chapter or any other applicable law. (Ord. 297 §1, 1993)

#### **13.10.020 Establishment of enterprise.**

A. There is hereby recognized, established and designated the "Town of Firestone Water Activity Enterprise" (the "enterprise"). The enterprise shall consist of the business represented by all of the town's

water and sewer facilities and properties, now owned or hereafter acquired, whether situated within or without the town boundaries, including all present or future improvements, extensions, enlargements, betterment, replacements or additions thereof or thereto. The enterprise shall have all of the authority, powers, rights, obligations and duties as may be provided or permitted by the laws of the state and the Colorado Constitution, and as may be further prescribed by ordinance or resolution of the town.

B. The enterprise shall continue to be a wholly owned business of the town and shall not be combined with any municipal activity enterprise owned by another district. The enterprise may continue to conduct the activities and provide the services as provided for in the ordinances of the town and the regulations adopted pursuant thereto. This paragraph shall not limit the authority of the enterprise to contract with any other person or entity, including other districts or enterprises. (Ord. 297 §2, 1993)

#### **13.10.030 Governing body.**

A. The governing body of the enterprise (the "governing body") shall be the board of trustees of the town, and shall be subject to all of the applicable laws, rules and regulations pertaining to the board of trustees. Whenever the board of trustees is in session, the governing body shall also be deemed to be in session. It shall not be necessary for the governing body to meet separately from the regular and special meetings of the board of trustees, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the enterprise. The governing body may conduct its affairs in the same manner and subject to the same laws which apply to the board of trustees for the same or similar matters; provided that in accordance with Section 37-45.1-104(2), C.R.S., the governing body may authorize the issuance of bonds by adoption of a resolution.

B. The governing body of the enterprise may exercise the town's legal authority relating to water activities, but no enterprise may levy a tax which is subject to Section 20(4) of Article X of the Colorado Constitution. (Ord. 297 §3, 1993)

#### **13.10.040 Maintenance of enterprise status.**

The enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" as defined in Section 35-45.1-102, C.R.S., and as an "enterprise" as defined in Article X, Section 20, Colorado Constitution. Specifically, but not by way of limitation, the enterprise is not authorized, and shall not receive ten percent or more of its annual revenue in grants from all Colorado state and local governments combined. (Ord. 297 §4, 1993)

#### **13.10.050 Issuance of bonds.**

The enterprise maintained pursuant to this chapter, through the board of trustees, may issue or reissue revenue bonds, notes or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or facilities of the enterprise or from any other available funds of the enterprise, in accordance with and through provisions of Section 37-45.1-104, C.R.S.; provided, however, that the powers provided in said section shall not modify, limit or affect the powers conferred by any other law either directly or indirectly. (Ord. 297 §5, 1993)

## Chapter 13.11

### Stormwater Activity Enterprise and Stormwater Utility Service Fees

#### Sections:

- 13.11.010 General purpose and policy.
- 13.11.020 Definitions.
- 13.11.030 Stormwater activity enterprise.
- 13.11.040 Stormwater utility service fee.
- 13.11.050 Use of service fees.
- 13.11.060 Administrative and judicial review.
- 13.11.070 Enforcement and penalties.

#### **13.11.010 General purpose and policy.**

A. This chapter is adopted to further the purpose of the town to design, construct, install, improve, operate, maintain, repair and replace stormwater facilities for its own use and for the use of public and private users within and outside the territorial boundaries of the town and to establish a methodology and requirement for the payment of reasonable stormwater utility service fees for property owners to pay for a share of the costs of stormwater facilities reasonably necessary to manage stormwater.

B. Furthermore, this chapter will promote the general public health, safety and welfare by reducing the potential for the movement of emergency vehicles to be impeded or inhibited during storm or flooding periods; by minimizing storm and flood losses, inconvenience and damage resulting from runoff; by promoting activities which improve the water quality of runoff in the town; and by protecting the continued operation of other public utility services.

C. Notwithstanding the above, floods from runoff may occur that exceed the capacity of stormwater facilities constructed and maintained by funds made available pursuant to this chapter. This chapter does not imply that property subject to the fees and charges established herein will be free from stormwater flooding or flood damage. This chapter shall not create or imply any liability on the part of the town or any officer or employee thereof for any flood damage. Further, this chapter does not purport to reduce the need for any property owner to obtain flood insurance. (Ord. 709 §1, 2009)

#### **13.11.020 Definitions.**

For the purposes of this chapter, the following words and terms shall be defined as follows, unless the context in which they are used clearly indicates otherwise:

- A. "Director" means the director of finance of the town or such person's designee.
- B. "Development" means any man-made change to real property, including but not limited to buildings or other structures, streets, parking lots, mining, dredging, filling, grading, paving or excavating.
- C. "Impervious surface" means surfaces on or in real property where the rate of infiltration of stormwater into the earth has been reduced by the works of man. For purposes of this chapter, buildings, man-made structures, driveways, patio areas, roofs, concrete or asphalt sidewalks, parking lots or storage

areas and other bricked, oiled, macadam or hard-surfaced areas which impede passage of stormwater into the earth's surface are deemed to be impervious.

D. "Person" means an individual, corporation, limited liability company, governmental agency, district, political subdivision, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or any other entity.

E. "Project costs" means all costs of administration, coordination, management, design, planning, engineering, construction, reconstruction, installation, repair, replacement, improvement and operation and maintenance of stormwater facilities, including but not limited to those costs to comply with federal, state or town laws regulating stormwater facilities or runoff, and also including but not limited to associated costs for acquisition of rights-of-way and other interests in land for stormwater facilities, contingencies, financing, legal, accounting and other professional services.

F. "Runoff" means that part of snowfall, rainfall or other stormwater that is not absorbed, transpired, evaporated or left in surface depressions and that then flows controlled or uncontrolled into a street, storm sewer, watercourse or body of water.

G. "Service fee" means the stormwater utility service fee established in this chapter.

H. "Stormwater facilities" means any one or more of the following devices used in the collection, treatment or disposition of storm, flood or surface drainage waters, including all man-made structures or natural watercourses for the conveyance of runoff: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins, manholes, fittings, flared end sections, wingwalls, headwalls and street facilities; all inlets and outlet structures; collection, drainage or disposal lines; intercepting sewers; disposal plants; settling basins; emergency spillways; outfall sewers; all pumping, power and other equipment and appurtenances; any other drainage facility that collects, conveys, deposits, detains, retains and/or discharges stormwater; all extensions, improvements, remodeling, additions and alterations thereof; and any and all rights or interests in such stormwater facilities.

I. "Watercourse" means a stream having a body or banks and usually discharging into some other stream or body of water. (Ord. 709 §1, 2009)

#### **13.11.030 Stormwater activity enterprise.**

There is established a stormwater activity enterprise in the town, which is created as and deemed to be a "water activity enterprise," as defined in Section 35-45.1-102, C.R.S., and an "enterprise," as defined in Article X, Section 20 of the Colorado Constitution. Through said enterprise, the town will design, construct, install, improve, operate, maintain, repair and replace stormwater facilities and pay other project costs and perform other functions or duties authorized by law. Such stormwater facilities shall be owned by the town and operated in accordance with all applicable laws. (Ord. 709 §1, 2009)

#### **13.11.040 Stormwater utility service fee.**

A. Fee established. There is hereby imposed on the owner of each and every lot or parcel of land within the town a stormwater utility service fee (the "service fee"). The amount of such service fee shall be as set by

resolution of the board of trustees from time to time and shall include a "base fee" and a "developed fee" as follows:

1. Base fee. A base fee shall be imposed on the owner of each and every lot or parcel of land within the town, except as provided in Subsection C. below.

2. Developed fee. In addition to the base fee, a developed fee shall be imposed on the owner of each and every lot or parcel of land containing an impervious surface, except as provided in Subsection C.

B. Basis for fee. The basis for the amount of the service fee is the extent to which each lot or parcel of land, whether undeveloped or developed, within the town makes use of the stormwater facilities. The service fee is also based on the cost of including the lot or parcel in the property and billing records, plans and monitoring activities of the stormwater activity enterprise. The service fee is deemed reasonable and necessary to pay for the project costs of existing and future stormwater facilities.

C. Exemptions. All railroad rights-of-way; public highways, roadways, streets and alleys; and all facilities and land owned by the town, county, state and federal government and any water district, sanitation district, fire protection district, school district or library district shall be exempt from the service fee and all other charges imposed by this chapter.

D. How fee collected. The service fee shall be billed and collected monthly for developed single-family detached and duplex attached residential fee classifications and shall be billed and collected on a monthly, quarterly or semi-annual billing basis, as determined by the director, for all other fee classifications. The service fee shall be billed and collected with the town water bill or, in the event the lot or parcel is not served under a water account, then by separate billing. All billings and notices regarding the service fee shall be effective upon mailing said billing or notice to the address of the property that is being served or to the last known address of the property owner of the property being served as shown in the most current of the records of the town or county assessor. Regardless of the person to whom the bill is initially directed, the owner of the property is ultimately responsible for the payment of the service fee. All services fees are due upon the date stated in the bill. Failure to receive a bill is not a defense to nonpayment.

E. Fee classifications. For purposes of imposing the stormwater service fee, all lots and parcels within the town are classified into the following two classes: single-family detached, and duplex attached residential and all others. Said two classes are to be further classified as developed or undeveloped, and single-family detached residential lots are to be further classified by lot size. The director is directed to prepare a list of lots and parcels within such classifications and assign thereto the appropriate fee.

F. Changes in property. The owner of any non-single-family detached or duplex attached residential property shall notify the director when any undeveloped, grassed, landscaped or cultivated portion of the owner's property has been modified in any manner so as to create additional impervious area of ten percent of the total impervious surface area or one thousand square feet of impervious surface area, whichever is less. The owner shall provide such notice within thirty days of the modification. The town shall have the right to assess additional stormwater service fees attributable to such modification from and after the date such modifications are completed.

G. Additional fees. If any fees remain unpaid after the due date stated on the bill, the account shall be deemed delinquent, and interest shall be assessed at the rate of one and one-half percent per month. A late fee of five dollars shall also be assessed on overdue amounts of twenty dollars or more. The service fee shall also

be subject to additional charges for delinquent payment, uncollectible checks, liens and any other penalties, which shall be the same as those imposed in connection with town water utility charges.

H. Relation to impact fees. The service fee set forth in this section shall be in addition to any drainage impact fees required to be paid pursuant to Chapter 3.20 of this code. (Ord. 709 §1, 2009)

**13.11.050 Use of service fees.**

The town's stormwater activity enterprise shall hold all funds received by the town under this chapter in a separate stormwater activity enterprise account and make expenditures thereof only for stormwater facilities or other authorized purposes of the stormwater activity enterprise. Additionally, the town may pledge service fees collected under this chapter and those anticipated to be collected to the retirement of the principal and interest of revenue or general obligation bonds issued by the town for financing of the costs of any stormwater facilities or other authorized purpose of the stormwater activity enterprise or for the purpose of refunding any obligations issued or otherwise contracted for such purpose. The town may also pledge service fees collected under this chapter and those anticipated to be collected to participate with any public entity or private party having a common interest in stormwater facilities that benefit the town. (Ord. 709 §1, 2009)

**13.11.060 Administrative and judicial review.**

A. Right to petition. A property owner may petition the director for a revision or modification of the service fee no later than thirty days after having been billed for such charge. Any such petition may only be filed once in connection with the issue or issues presented in the petition, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition. The basis for the petition is limited to the following issues:

1. For properties other than single-family detached and duplex attached residential, the impervious surface area on the property has been improperly measured or calculated.
2. The property is exempt from the service fee pursuant to Subsection 13.11.040.C. above.
3. The property has been improperly assessed the developed fee.

B. In writing. Any petition by a property owner shall be in writing, shall include the name, address and telephone number of such property owner, the address of the property subject to the petition and a concise statement of the fact giving rise to the petition and the relief requested by the petition. A petition brought under Paragraph A.1. of this section shall also be accompanied by a current lot survey or improvement location certificate prepared by a licensed surveyor that shows the property boundaries and surveyed limits of the impervious surface on the property. Any other relevant information in support of the petition shall be submitted with the petition.

C. Informal meeting. The director may attempt to resolve the issues raised in the petition via a telephone conference, or the director may recommend an informal meeting with the property owner. The director shall make a final decision on the petition within thirty days of receipt of the petition and may confirm or modify the service fee or determination in accordance with the facts submitted. Such decision by the director shall be in writing, and notice thereof shall be mailed to or served upon the petitioner within ten days from the date of the director's action. Service by certified mail, return receipt requested, to the address of the property owner stated in the petition shall be conclusive evidence of notice for the purpose of this chapter. Such action by the

director shall be considered final, and the remaining total liability, if any, shall be paid on or before thirty days after the date of the decision. Any review of the director's final action shall be by the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 709 §1, 2009)

**13.11.070 Enforcement and penalties.**

A. Owner liable for fee. In the event any owner or owners of any lot or parcel of land within the boundaries of the town shall neglect, fail or refuse to pay the service fees fixed and imposed pursuant to this chapter, such owner shall be liable to the town therefor, and the town may pursue any remedy available at law or equity to enforce and collect the service fees. The town may also recover, in addition to all fees and charges due, all court costs, attorney fees and interest on the amount owing.

B. Lien declared; certification. The board of trustees hereby finds and determines that it is the policy of the town that all stormwater facilities supplied and furnished by the town and supported by the service fee shall be deemed to be supplied and furnished to the real property so served without regard to the actual person, business, organization or entity billed for stormwater facilities. Accordingly, in addition to other civil collection procedures, all fees and charges, together with all interest and penalties for default in payment and all costs in collecting the same, until paid, shall constitute a perpetual lien on the property, on a parity with the tax lien of general, state, county, city, town or school taxes, and no sale of such property to enforce any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien for such fees, charges, interest, penalties and costs. All delinquent service fees, together with accrued interest and penalties, and all costs of collection incurred, shall be certified by the town to the county treasurer, pursuant to Section 31-20-105, C.R.S., as amended, and collected and paid over to the county treasurer in the same manner as taxes.

C. Delinquency charges. Delinquent charges and fees may be collected as any other utility bill owed to the town at the option of the town.

D. Remedies cumulative. No remedy provided herein shall be exclusive, but the same shall be cumulative; and the taking of any action hereunder shall not preclude or prevent the taking of any other action hereunder or the pursuit of any other judicial or administrative remedy, including, without limitation, civil action for collection and action for injunctive relief to enjoin any violation of this chapter. (Ord. 709 §1, 2009)

**Chapter 13.12**

**Emergency Telephone Service**

**Sections:**

- 13.12.010 Created.
- 13.12.020 Emergency telephone tax.
- 13.12.030 Tax collection.

**13.12.010 Created.**

The mayor is authorized to sign the intergovernmental agreement attached to the ordinance codified in this chapter creating an emergency telephone service authority in order to establish and maintain an emergency

service system in the County of Weld, Colorado, to include the portions of this Town lying within the County of Weld, Colorado. (Ord. 241 §1, 1988)

**13.12.020 Emergency telephone tax.**

There is imposed pursuant to Section 29-11-101, C.R.S., as amended, upon all telephone exchange access facilities within that portion of the Town, located within Weld County, an emergency telephone charge in an amount not to exceed two percent of the tariff rates as approved by the Public Utilities Commission or fifty cents, whichever is less. Upon authority, the Town Board may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent of the tariff as approved by the Public Utilities Commission. (Ord. 241 §2, 1988)

**13.12.030 Tax collection.**

Telephone service suppliers providing telephone service in the Town are authorized to collect the emergency telephone charge imposed by this Chapter in accordance with Section 29-11-101, C.R.S., as amended, and to provide those funds to the Weld emergency telephone service authority as provided in the intergovernmental agreement. (Ord. 241 §3, 1988)

**Chapter 13.16**

**Cable Television Franchises**

**Sections:**

13.16.010 Grant of franchise – Term.

**13.16.010 Grant of franchise – Term.**

A. Pursuant to the ordinance codified herein, the Town granted to Comcast of Colorado IV, LLC, a nonexclusive and revocable authorization to make reasonable and lawful use of the public streets, easements and other rights-of-way to construct, operate, maintain, reconstruct, rebuild and upgrade a cable television system for the purpose of providing cable services subject to the terms and conditions set forth in the Cable Television Franchise Agreement, copies of which are on file in the office of the Town Clerk.

B. The term of the franchise granted by the Town shall be for a period of five years from the effective date of the Agreement. (Ord. 767 §3, 2011; Ord. 765 §1, 2010; Ord. 756 §1, 2010; Ord. 725 §1, 2009; Ord. 429 §3, 1999)

**Chapter 13.20**

**Gas Franchise**

**Sections:**

- 13.20.010 Short title.
- 13.20.020 Definitions.
- 13.20.030 Grant of franchise.
- 13.20.040 Supply, construction and design.

- 13.20.050 Indemnity.
- 13.20.060 Relocation of facilities.
- 13.20.070 Nonexclusivity of franchise.
- 13.20.080 Service standards.
- 13.20.090 Continuation of service.
- 13.20.100 Franchise fee.
- 13.20.110 Franchise fee payment not in lieu of other fees or permits.
- 13.20.120 Surcharge fees.
- 13.20.130 Town's right to condemn.
- 13.20.140 Term of franchise.
- 13.20.150 Right to removal of facilities.
- 13.20.160 Assignment.
- 13.20.170 Forfeiture.
- 13.20.180 Severability.
- 13.20.190 Reserved rights.
- 13.20.200 Regulation.
- 13.20.210 No third party beneficiaries.
- 13.20.220 Amendments to franchise.

**13.20.010 Short title.**

This chapter shall be known and may be cited as the "SourceGas Distribution Franchise Ordinance." (Ord. 638 §1, 2007)

**13.20.020 Definitions.**

For the purpose of this chapter, the following terms shall have the meaning given herein:

"Board" or "board of trustees" means the board of trustees of the town of Firestone, Colorado.

"Facility" or "facilities" means all apparatuses reasonably necessary for the grantee to provide gas service into, within and throughout the town, including but not limited to plants, works, systems, distribution structures, equipment, pipes, mains, gas compressors, meters, meter reading devices, communications and data transfer equipment and gas regulator stations.

"Firestone Trail" means the abandoned Union Pacific Railroad right-of-way further described in those certain instruments recorded at Reception No. 2538622 and 25386323 in the office of the Weld County Clerk and Recorder.

"Grantee" or "company" means SourceGas Distribution LLC, formerly known as Kinder Morgan, Inc., its successors and assigns, the grantee of rights under this franchise.

"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

"Residents" means all persons, businesses, industries, governmental agencies and any other entities whatsoever, presently located or hereinafter to be located, in whole or in part, within the territory of the town.

"Streets" refers to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in the town, excluding any easements the terms of which do not permit the use thereof by the company, and excluding the Firestone Trail.

"Town" means the town of Firestone, Colorado, the grantor of rights under this franchise. (Ord. 638 §2, 2007)

#### **13.20.030 Grant of franchise.**

The town hereby grants to the grantee the nonexclusive right to use the streets within the town to furnish, transmit, transport and distribute gas – whether natural, artificial or a combination thereof – within and through the town. The town also hereby grants to the grantee the nonexclusive right, privilege and authority to locate, install, build, construct, acquire, purchase, extend, maintain and operate into, within and through said streets within the town as the same now exist or may hereafter be extended, all facilities reasonably necessary for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute gas to the town and the inhabitants thereof for heating, cooking or other purposes. These rights shall extend to all areas of the town as now constituted and to any and all such new streets as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said town. (Ord. 638 §3, 2007)

#### **13.20.040 Supply, construction and design.**

The grantee shall locate its facilities within the town in a manner to meet with the approval of the town. All excavation and construction work performed by the grantee shall be done in accordance with all ordinances, resolutions, rules, regulations and standards of the town and further in such manner as to cause minimum interference with the town's use of streets and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said streets or other public ways and places. All work on grantee facilities in the streets is subject to inspection and approval by the town to ensure that said work has been performed in accordance with applicable town ordinances, resolutions, rules, regulations and standards. Such inspections and approvals may include, but are not limited to, proposed locations for facilities in the streets, disturbance of pavements, sidewalks and surfaces of the streets or adjoining landscaping. Should it become necessary for the grantee, in exercising its rights and performing its duties hereunder, to interfere with then-existing streets or other public or private improvements, including but not limited to water mains, sewers, landscaping or other improvements, the grantee shall repair promptly any damage to said improvements or streets at its own expense in a workmanlike manner subject to the approval by the town and in accordance with the provisions of this code. If the grantee fails to repair the streets or improvements which are damaged through the action of the grantee, the town may make such repairs and charge the reasonable cost thereof to the grantee. (Ord. 638 §4, 2007)

#### **13.20.050 Indemnity.**

The grantee shall indemnify, defend and hold harmless the town from and against all liability or damage and all claims, demands or liens arising out of the grantee's operations within the town or related to or arising out of the exercise by the grantee of any rights and privileges hereby granted; and for this purpose the grantee shall maintain public liability insurance in an amount not less than one million dollars and upon request shall furnish a certificate of insurance to the town so showing. The town shall provide prompt written notice to the grantee of the pendency of any action against the town arising out of such exercise by the grantee of said

rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same. The obligation of this Section 13.20.050 shall not extend to any liability or damage and all reasonable expenses accruing against the grantee arising out of the negligence, recklessness or willful and wanton misconduct of the town, its officers, employees, agents, representatives or contractors. (Ord. 638 §5, 2007)

**13.20.060 Relocation of facilities.**

A. If at any time it shall be necessary to change the position of any gas main or service connection of the grantee to permit the town to lay, make or change street grades, pavements, sanitary or storm sewers, water mains or other town public works, such changes shall be made by the grantee at its own expense. Such relocation shall be completed within a reasonable time, not to exceed one hundred twenty days from the date on which the town requests that such relocation work commence, unless weather, scope of the project, availability of materials or other causes beyond the parties' control prevents completion in this period. The grantee shall bear all costs associated with relocation of any gas main or service connection that is the result of public works construction, including but not limited to the alteration of street alignment, grades or pavement. The town shall make reasonable efforts to confer, in its usual course of managing public works projects, with the grantee in regards to impending public works projects that may require relocation of grantee facilities and seek the grantee's input during the initial planning and engineering phase of any such town project. The town shall make reasonable efforts to mitigate the financial impact of any such project on the grantee.

B. The town may request that the grantee relocate its facilities in less than ninety days if needed by the town. Should the town request such an expedited relocation for reasons other than safety or emergency circumstances that require immediate action to prevent loss of life or significant damage to property or preserve integrity of an asset, the grantee and the town shall confirm the time frame within which the grantee will relocate the facilities, and assess whether the grantee will incur any additional costs in the relocation as a result of the town's expedited schedule. If the grantee will incur additional costs directly related to relocating the facilities within the time frame needed by the town for such expedited relocation, the town will pay these additional costs, provided that the grantee and town agree to the amount of the additional costs prior to the relocation. Any expedited relocation as a result of a safety or emergency circumstance that requires immediate action to prevent loss of life or significant damage to property or preserve the integrity of an asset will be at the grantee's cost.

C. The town will not oppose just and reasonable recovery of substantial costs the grantee incurs in complying herewith that the grantee requests from the Public Utilities Commission of the state of Colorado (PUC). (Ord. 638 §6, 2007)

**13.20.070 Nonexclusivity of franchise.**

This franchise and the right to use and occupy said streets shall not be exclusive, and the Town reserves the right to grant the use of said streets to any person during the period of this franchise. (Ord. 638 §7, 2007)

**13.20.080 Service standards.**

A. The grantee shall maintain and operate its facilities and render efficient service in accordance with the rules and regulations of the PUC and the terms and conditions of the town code, other regulations and this franchise.

B. Maps. The grantee shall prepare and submit to the town a map showing the location of its distribution system, showing location, size and depth of lines, locations of shutoff valves and gates, and all appurtenances incident to the distribution system, so far as such facilities can reasonably be projected. The map shall be kept current and filed with the town clerk's office by May 1 of each year, when necessary. If the grantee fails to keep such map current and provide the required information, the town may cause such work to be done and charge all costs thereof to the grantee.

C. Plans. Before commencement of installation of pipes in the town, the grantee shall prepare and submit to the town a map showing the location, size and depth of lines, locations of shutoff valves and gates, and all appurtenances incident to the distribution system, so far as such facilities can reasonably be projected. In addition, the grantee shall submit a construction plan, including a construction schedule, showing the streets and alleys where excavations will be simultaneously open at any given time, making provision for traffic routing in the event of interruption, setting forth the places where pavement cuts are expected, and where underground boring will occur for pipe installation. Construction may then proceed upon approval of said map and plan and the issuance of a street cut permit by the town. Nothing herein shall be construed to limit application of the town's ordinances pertaining to installation of pipelines, conduits, transmission lines and cables as well as ordinances pertaining to excavation to the activities of the grantee, except as provided herein.

D. Use of trenches. If the grantee opens a trench to install its facilities, the grantee shall provide reasonable advance notice to the town so as to permit the town to install town facilities in the same trench at the town's expense. The town shall share in the cost of the trenching if used by the town on a pro rata basis. The town's installation of its facilities shall not interfere with the grantee's facilities or delay the commencement or completion of the grantee's construction project within the streets.

E. Use of Firestone Trail. This franchise does not authorize use by the grantee of the Firestone Trail. Any proposed use of the Firestone Trail by the grantee shall be subject to approval or rejection by the board in its discretion and, if approved, shall be addressed in an easement agreement or other agreement executed on behalf of the town and the grantee.

F. Access to premises. To the extent allowed by law, the grantee shall have the right to enter the premises of consumers at reasonable times for the purpose of reading meters, inspecting gas appliances, pipes and equipment and for the purpose of ascertaining loads, making necessary tests and installing, disconnecting or removing meters. (Ord. 638 §8, 2007)

**13.20.090 Continuation of service.**

If, during the term of this franchise, there occurs a failure or partial failure of the supply of natural gas available to the grantee because of depletion of such supply, the grantee shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the grantee and, if unable to procure the same, it is hereby authorized to supply artificial or mixed gas for the unexpired term of this franchise. If the grantee, within a reasonable period after failure of the supply of natural gas, shall fail to supply to its customers artificial and/or mixed gas, the franchise rights granted herein shall terminate. (Ord. 638 §9, 2007)

**13.20.100 Franchise fee.**

A. In consideration of the rights and privileges herein granted, the grantee shall assess, effective the first billing cycle after this franchise becomes effective, to residential and commercial customers of the grantee within the Town of Firestone, Colorado, a franchise tax or fee equivalent to \$0.0235 per ccf (100 cubic feet) for gas delivered to residential and commercial customers within the Town on grantee's distribution system. The Grantee shall pay to the Town Treasurer an amount equal to the franchise fee or tax funds collected by the grantee hereunder. Payments to the Town of the franchise fee collected shall be made quarterly within sixty days of each calendar quarter, and each such payment shall be accompanied by a statement supporting the payment.

B. Such payment shall be in lieu of any and all other fees (including pipeline, conduit, transmission line, cable and excavation permit fees), charges, licenses, taxes or assessments which the Town may impose for the rights and privileges herein granted or for the privilege of doing business within the Town and for the use of the streets, and in the event any such fee, charge, license, tax or assessment shall be imposed by the Town, the payment to be made in accordance with the provisions of this Section shall be refunded in an amount equal to the annual burden of such fee, charge, license tax or assessment imposed upon the grantee. Ad valorem property taxes imposed generally upon all real and personal property within the Town shall not be deemed to affect the obligation of the grantee under this Section.

C. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Section, the Town Manager or the Town Manager's designee shall have access to the books, accounts and other records of the grantee for the purpose of checking the gross revenue received and volume of gas sold and delivered from operations within the Town.

D. If at any time during the term of this franchise the manner in which the franchise fee is calculated, collected or paid is changed, whether by action of the grantee, the PUC or any entity having jurisdiction thereof, the grantee agrees to cooperate with the Town in modifying the franchise to assure that the grantee collects and the Town receives an amount in franchise fees or some other form that is the same amount or more than the amount of franchise fees collected by the grantee and paid to the Town as of the date of such change and required modification, to the extent permitted by law. (Ord. 731 §3, 2010; Ord. 712 §1, 2009; Ord. 638 §10, 2007)

**13.20.110 Franchise fee payment not in lieu of other fees or permits.**

Payment of the franchise fee by the grantee as accepted by the Town does not exempt the grantee from sales tax, license fees, sales and use taxes, head taxes, building permit fees, land use fees, development impact fees or other fees and charges that are required to be paid pursuant to ordinances of general application that are not pursuant to the rights and privileges herein granted or for the privilege of doing business within the Town and for the use of the streets. The Grantee shall be responsible for obtaining all applicable Town approvals and permits for the installation of pipelines, conduits, transmission lines and cables, and for excavation, although the permit fee for such excavation or installation of pipelines, conduits, transmission lines or cables shall not be applicable pursuant to Section 13.20.100 herein. (Ord. 638 §11, 2007)

**13.20.120 Surcharge fees.**

The grantee shall be permitted to surcharge the franchise fee to the residents of the Town who use facilities of the grantee in the streets to obtain gas. The grantee shall not be permitted to surcharge residents

of the Town any other payments it makes to the Town. Franchise fees charged to the Town for gas service provided to the Town for its own consumption shall be rebated to the Town quarterly and included in the quarterly payment pursuant to Section 13.20.100. (Ord. 638 §12, 2007)

**13.20.130 Town's right to condemn.**

The Town shall have the right to condemn the facilities of the grantee or to otherwise restrict the grantee's opportunity to conduct business in the Town as provided by Section 31-15-707, C.R.S., or other applicable law. (Ord. 638 §13, 2007)

**13.20.140 Term of franchise.**

This franchise shall be in full force and effect from and after its passage, approval and publication as by law required and upon acceptance thereof in writing by the grantee within thirty days of final passage, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of twenty years from and after the date of final passage of the ordinance codified herein. Unless additional time to provide written acceptance of the franchise is requested in writing by the grantee and approved by the Town, the failure of the grantee to provide written acceptance of this franchise within thirty days of final passage shall be deemed an acceptance of such franchise. (Ord. 638 §14, 2007)

**13.20.150 Right to removal of facilities.**

Upon the termination of this franchise, if the grantee has not acquired an extension or renewal thereof and accepted same, the grantee may remove its facilities from the streets and other public places of the Town, provided that the Town has had ample time and opportunity to purchase, condemn or replace said facilities. In so removing its facilities, the grantee shall, at its own expense and within a reasonable time not to exceed one hundred eighty days, restore all property affected by removal operations to their pre-existing condition, to the satisfaction of the Town. (Ord. 202 §15, 1984)

**13.20.160 Assignment.**

The grantee may assign this franchise, or the rights granted hereunder, without first obtaining the written consent of the Town, except in the circumstance that the company offers to sell or enters into a contract to sell only the system subject to this franchise. Town consent to assignment shall not be unreasonably withheld, and this section shall not be construed to restrict or prevent the issuance of bonds, debentures or other evidence of indebtedness, or the issue of additional stock, needed or useful for the purpose of financing the system or any portion thereof. (Ord. 638 §16, 2007)

**13.20.170 Forfeiture.**

If the grantee fails to perform any of the terms and conditions of this franchise, the Town may notify the grantee of the specific failure and shall allow the grantee a reasonable time within which to remedy the failure, not to exceed one hundred twenty days or additional days if agreed to by the parties. The Town reserves the right to declare a forfeiture of this franchise for the breach of a substantial and material provision thereof. No forfeiture shall be declared until the grantee shall have had an opportunity to be heard and to correct or justify the alleged breach. Upon failure of the grantee to exercise reasonable diligence to correct such condition, the Town may declare this franchise forfeited and notify the grantee in writing. In the event that this franchise is forfeited, then the grantee agrees to continue to render service as theretofore provided

until the Town makes alternative arrangements for such services. Neither the Town nor the grantee shall be in breach or forfeiture of this franchise if failure to perform is due to uncontrollable forces, which shall include but not be limited to accidents, acts of God, floods, storms, fires, sabotage, terrorist attack, labor disputes, riots, war, forces of nature and other causes or contingencies of whatever nature beyond the reasonable control of the parties affected, which could not reasonably have been anticipated and avoided. (Ord. 638 §17, 2007)

**13.20.180 Severability.**

If any section, subsection, sentence, clause, phrase or portion of this franchise is for any reason held invalid, unconstitutional or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof. The Town Board declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid. (Ord. 638 §18, 2007)

**13.20.190 Reserved rights.**

The right is hereby reserved by the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power to protect the health, safety and welfare of the public, including but not limited to ordinances to control and regulate the use of the streets and the space above and beneath the streets. Neither the Town nor the grantee waives any rights under the statutes and constitution of the state of Colorado or of the United States except as otherwise specifically set forth herein. (Ord. 638 §19, 2007)

**13.20.200 Regulation.**

This franchise and the respective rights and obligations of the parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this franchise, one or both of the parties or any transaction hereunder. (Ord. 638 §20, 2007)

**13.20.210 No third party beneficiaries.**

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. 638 §21, 2007)

**13.20.220 Amendments to franchise.**

This franchise may be amended only by a writing signed by both the grantee and the Town, which is approved in the same manner as is required for the passage for the ordinance adopting this franchise. (Ord. 638 §22, 2007)

## Chapter 13.24

### Electric Franchise

#### Sections:

- 13.24.010 Short title.
- 13.24.020 Definitions.
- 13.24.030 Grant of franchise.
- 13.24.040 Effective date and term of franchise.
- 13.24.050 Financial responsibility.
- 13.24.060 Notice of boundary changes.
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### **13.24.010 Short title.**

This agreement shall be known as the Town of Firestone/United Power Electric Franchise Agreement ("Franchise Agreement," or "Franchise," or "Agreement"). (Ord. 766 §1, 2011)

### **13.24.020 Definitions.**

For the purpose of this Franchise Agreement, the following words and phrases shall have the meaning given in this Section. 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 Section shall be given their common and ordinary meaning.

"Board" or "Board of Trustees" means the governing body of the Town of Firestone.

"Commission" or "CPUC" means the Colorado Public Utilities Commission.

"Electricity" and "Electric service" means all electric energy and electric service provided to customers located within the Town, including street lighting and traffic signal lighting 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 Town for transportation, distribution and sale of electricity and include, but are not limited to, plants, works, systems, substations, transmission and distribution structures, lines, street lighting fixtures, equipment, conduit, transformers, underground lines, meter reading devices, communications and data transfer equipment, wires, cables, poles and building structures.

"Other Town property" refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the Town or hereafter held by the Town, that would not otherwise fall under the definition of "streets."

"Party" or "parties" refers to and includes United Power and the Town, either singly or collectively as the context requires.

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

"Public project" refers to (1) any public work or improvement within the Town that is wholly funded by the Town; (2) any public work or improvement that is wholly owned or is to be wholly owned by the Town after construction and Town acceptance; (3) or any public work or improvement within the Town where fifty percent or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, Weld County, the Firestone Urban Renewal Authority, or any other public body or governmental entity, including without limitation any Colorado municipality, any water conservation, water conservancy or drainage district, and any 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 the 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 the United Power that is located within the streets or other Town property.

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

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

"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 Town of Firestone, which United Power is certified to serve.

"Streets" means 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 Town.

"Street lighting facilities" refers to all United Power facilities necessary to provide street lighting service.

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

"Town" means the Town of Firestone, a Colorado statutory Town and municipal corporation located in Weld County, Colorado, and includes the territory that currently is, or may in the future be, included within the boundaries of the Town of Firestone within Weld County.

"Town Manager" means the Town Manager, and any agent, representative, officer or employee of the Town designated by the Town Board or the Town Manager to act as the official Town representative with the authority to act on behalf of the Town under this Franchise Agreement.

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

"Traffic signal lighting service" refers to the furnishing of 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.

"Town streets" means the roads, streets, alleys and associated right-of-way easements owned or controlled by the Town.

"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. (Ord. 766 §1, 2011)

#### **13.24.030 Grant of franchise.**

The Town hereby grants to United Power, for the period specified herein, and subject to the conditions, terms and provisions contained in this Agreement, a non-exclusive right to furnish, sell and distribute electricity within the Town, to the Town and to all residents of the Town within United Power's service area as specified by the Commission. Subject to the conditions, terms and provisions contained in this Agreement, the Town also hereby grants to United Power a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within the Town as may be necessary to carry out the terms of this Agreement subject to the Town's right of usage for and subject to the Town's reasonable exercise of the police powers, including but not limited to zoning, subdivision, permit and building code requirements. These rights shall extend to all areas of the Town within United Power's service area as specified by the Commission, as the Town is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise in said service area. The Town and United Power do not waive any of their rights under the statutes and Constitution of the State of Colorado and the United States except as otherwise specifically set forth herein. The rights granted in this Franchise Agreement include the right to provide street lighting service and traffic signal lighting service to the Town, for which the Town will pay in accordance with its agreement, as referenced in Section 13.24.090 below, with United Power or its established tariffs. These rights shall extend to all areas of the Town within United Power's certificated territory, as it is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise within United Power's service territory. (Ord. 766 §1, 2011)

#### **13.24.040 Effective date and term of franchise.**

This Franchise Agreement shall be effective as of the effective date of the ordinance adopting the same and shall supersede any prior franchise grants to the United Power by the Town. The term of this Franchise Agreement shall be fifteen years unless extended by mutual agreement of the parties. This Franchise Agreement is not intended to revoke any prior license, grant or right to use the streets or other Town property, and such licenses, grants or rights of use are hereby affirmed. Such rights shall hereafter, be governed by the

terms of this Franchise Agreement. 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 undergrounding of distribution lines shall be construed under this Agreement. All undergrounding 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. (Ord. 766 §1, 2011)

**13.24.050 Financial responsibility.**

A. At the time of presentation of the letter accepting the terms of this Franchise Agreement, United Power shall submit to the Town certificates of insurance to demonstrate that United Power has the following insurance coverages to meet its obligations under the Franchise Agreement: workers' compensation insurance, comprehensive general liability and automobile liability insurance. The Town shall be listed as an additional listed insured for the comprehensive general liability insurance. United Power shall continuously maintain such coverage during the term of this Franchise Agreement, and the certificates of insurance shall be kept current by annual revisions as of January 1 during the term of this Franchise Agreement. The Town reserves the right to request and receive copies of an insurance certificate(s) and the policies issued thereunder from United Power's insurers, demonstrating the placement of the coverages required hereunder. The Town may require, from time to time, and United Power agrees to provide, additional reasonable funding of United Power's indemnification obligations as a self-insured, if United Power is acting as a self-insured. Nothing herein contained shall create any right in any third party or cause the Town to be liable to any party for a failure so to act.

B. The parties hereto understand and agree that the Town, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this Franchise Agreement, the monetary limitations (as of December 31, 2010, one hundred fifty thousand dollars per person and six hundred thousand dollars per occurrence) or any other rights, defenses, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its officers or its employees. (Ord. 766 §1, 2011)

**13.24.060 Notice of boundary changes.**

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

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

C. The Town will endeavor to provide to United Power a referral packet for all proposed annexations to the Town, which will be sent to United Power at the same time the Town sends copies of the referral packet to other referral agencies. Upon request, but no more frequently than quarterly, the Town shall provide United Power electronic or hard copies of GIS data referencing the Town's boundaries. Failure by the Town to comply with this Subsection will not result in a material breach of this Agreement or affect the validity of any annexation proceedings, nor preclude the Town from collecting franchise fees from revenues received by United Power from residents of the annexed area after the effective date of the annexation. (Ord. 766 §1, 2011)

**13.24.070 Conditions, limitations and exclusions.**

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

B. Nothing contained in this Franchise Agreement shall be construed to authorize United Power to engage in any activities requiring a license or permission from the Town other than the provision of electric service without first obtaining such license 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 be required to bear their costs of relocating such facility underground where United Power converts its shared above ground facilities to an underground facility.

C. This Agreement does not grant United Power the right, privilege or authority to use or occupy any land currently designated as parks, park land or open space of the Town or which may in the future be so designated except to the extent United Power is as of the effective date of the ordinance adopting this Franchise Agreement using or occupying said parks, park land or open space and as otherwise authorized in writing by the Town. United Power shall not expand its use or occupancy of said parks, park land or open space except by specific written authorization of the Town; provided, however, that nothing herein contained shall limit or restrict United Power's right to maintain, renovate, repair or replace any such facilities currently occupying said parks, park land or open space, subject to the conditions set forth in this Franchise Agreement. The Town may require removal, relocation or undergrounding of facilities from any parks, park land or open space subject to conditions set forth herein. (Ord. 766 §1, 2011)

**13.24.080 Police powers.**

A. The Town retains the following rights in regard to this Franchise Agreement:

1. To use, control and regulate, through the exercise of its police power, Town streets, public easements and other Town property, places and the space above and beneath them.
2. To impose such other regulations as may be determined by the Town Board to be necessary in the exercise of its police power to protect the health, safety, welfare and convenience of the public.

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

C. United Power shall promptly and fully comply with all laws, regulations, permits and orders enacted by the Town that are applicable to United Power's provision of electric service within the Town. (Ord. 766 §1, 2011)

**13.24.090 Payment of expenses incurred by Town in relation to ordinance.**

At the Town's option, United Power shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances related to this Franchise Agreement. (Ord. 766 §1, 2011)

**13.24.100 Continuation of utility service.**

In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, United Power will not remove any United Power facilities pending resolution of the disposition of the system, or portions thereof, and shall continue to provide, and be paid for at prevailing rates, electric service within the Town until the Town arranges for utility service from another provider. United Power further agrees that it will not withhold any continued interim electric services necessary to protect the public. The Town agrees that in the circumstances of this Section, 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 Town, at the same times and in the same manner as provided in this Franchise Agreement, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for the continued interim use of the Town's streets and other Town property. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electric service for residents and upon order of the CPUC shall United Power be allowed to discontinue the provision of electric service to the Town and its residents. United Power will be compensated through the agreed upon final date of interim electric service provided by United Power. (Ord. 766 §1, 2011)

**13.24.110 Franchise fee.**

In consideration for the grant of this Franchise, United Power shall pay the Town a sum equal to three percent of all revenues received from the sale of electricity within the Town. Payment of the franchise fee shall not exempt United Power from any lawful taxation upon its property or sales, except as set forth in Section 13.24.140 below. All amounts paid to United Power by the Town for use of electricity by any of its departments shall be excluded from computation of the franchise fee. (Ord. 766 §1, 2011)

**13.24.120 Surcharge of franchise fee.**

United Power may collect this fee by adding a surcharge not to exceed the franchise fee upon all Town residents that use facilities of United Power in the Town to obtain electrical service. (Ord. 766 §1, 2011)

**13.24.130 Electric service provided to Town.**

No franchise fee shall be charged to the Town for electric service provided to the Town for its own consumption, including street lighting service and traffic signal lighting service. (Ord. 766 §1, 2011)

**13.24.140 Franchise fee payment in lieu of certain fees.**

The Town accepts payment of the franchise fee by United Power in lieu of any occupation tax, occupancy tax, license tax or similar tax or fee the Town might charge United Power for the use or occupation of Town streets and other Town property. (Ord. 766 §1, 2011)

**13.24.150 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 Town, including by way of illustration any fee for a street closure permit, an excavation permit, a street cut permit or other lawful permits hereafter required by the Town, except that the franchise fee provided for herein shall be in lieu of any occupation fee or similar tax for the use of Town streets. (Ord. 766 §1, 2011)

**13.24.160 Payment schedule.**

Unless otherwise specifically provided herein, payment of the franchise fee accruing after the effective date of this Agreement shall be made in monthly installments not more than twenty days following the close of the month for which payment is to be made for the franchise fees resulting from the sale of electricity. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this Agreement. All payments shall be made to the Town in care of the Director of Finance. All payments shall be accompanied by an accounting detailing how the payment amount was calculated, which accounting shall include a statement of those amounts of money that United Power billed for the sale of electricity to residents within the Town; and showing the net taxable amount and the franchise fees billed. (Ord. 766 §1, 2011)

**13.24.170 Audit of franchise fee payments.**

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

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

C. Either party may challenge any written notification of error as provided for in this Section of this Franchise by filing a written notice to the other party within thirty 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 Town Manager, or official Town 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 Town Manager during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid.

E. In the event the Town determines after written notice to United Power that United Power is liable to the Town for payments, costs, expenses or damages of any nature, and subject to the United Power's right to challenge such determination, the Town may deduct all monies due and owing the Town from any other amounts currently due and owing the United Power. Upon receipt of such written notice, the United Power may request a meeting between the United Power's designee and a designee of the Town Manager to discuss such determination. As an alternative to such deduction, the Town may bill the United Power for such assessment(s), in which case, the United Power shall pay each such bill within thirty days of the date of receipt of such bill. If the United Power challenges the Town determination of liability, the Town shall make such payments pursuant to the United Power's tariffs until the challenge has been finally resolved. (Ord. 766 §1, 2011)

**13.24.180 Change of franchise fee and other franchise terms.**

The Town Board, upon giving ninety days' notice to United Power, may request that the Town and United Power review the franchise fee rate and other material financial aspects of this Franchise Agreement. Upon such a request by the Town, the parties shall engage in good faith negotiations related to amending the franchise fee rate, and/or other related provisions of this Franchise to allow the Town to receive a greater franchise fee rate or other significant benefit in the financial aspects of the Agreement. In no event shall the franchise fee be higher than the highest consideration paid by United Power to any municipality in the State of Colorado. (Ord. 766 §1, 2011)

**13.24.190 Most favored nation clause.**

United Power shall report to the Town, within sixty days of execution, the terms of any franchise or of any change of franchise in any other municipality that contains a franchise fee or other significant financial benefit greater than the franchise fee rate or other significant financial benefit to the Town contained in this Franchise Agreement. United Power shall also report about such other provisions which may be beneficial to United Power. If the Town Board decides the franchise fee or other significant financial benefit should be incorporated into this Franchise Agreement, such change shall be provided for by ordinance; any such change shall not be considered an amendment, renewal or enlargement of this Franchise Agreement. (Ord. 766 §1, 2011)

**13.24.200 Contract obligation.**

This Franchise Agreement constitutes a valid and binding agreement between United Power and the Town. In the event that the franchise fee specified in this Agreement is declared illegal, unconstitutional or void for any reason by final judgment of any court (or other proper authority), United Power shall be contractually bound to pay monthly fees to the Town in an aggregate amount that would be equivalent to the amount which would have been paid by United Power as a franchise fee hereunder as consideration for use of the Town streets and other Town property. (Ord. 766 §1, 2011)

**13.24.210 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 Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the CPUC. (Ord. 766 §1, 2011)

**13.24.220 Changes in utility service industries.**

The Town and United Power recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this Franchise Agreement, United Power agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, United Power will cooperate with and assist the Town in amending this Franchise Agreement to assure that the Town receives an amount in franchise fees or some other form of periodic compensation that is the same amount of franchise fee rate paid to the Town as of the date that such initiatives and changes adversely impact the future franchise fee revenue. (Ord. 766 §1, 2011)

**13.24.230 Supervision.**

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

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

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

1. To allow said official Town representative or his designee reasonable access to any part of United Power's plant, works and systems, and that said Town 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 Paragraph 2 below shall be on an "appointment made" basis during normal business hours. The Town official(s) provided access shall be accompanied by at least one employee of United Power of its choosing. The Town official(s) shall comply with all United Power requirements for such access, and particularly safety requirements. For safety reasons, United Power shall have the right to designate - at its sole discretion - the method, means and timing of such access, which access United Power can terminate or deny at its discretion.

2. To grant said official Town representative or his 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 Town official with such reasonable and necessary reports containing or based on information readily obtainable from United Power's books and records as the Town 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 Town representative to share information useful in coordinating management, operation and repair of the facilities of United Power and the operations and property of the Town. (Ord. 766 §1, 2011)

#### **13.24.240 Coordination of work.**

A. United Power agrees to meet with the Town'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 Town streets and on other Town property with the Town. The Town and United Power will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town streets and other Town property. The Town and United Power shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all provisions of this Franchise, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration. (Ord. 766 §1, 2011)

#### **13.24.250 Examination of records.**

The parties agree that any duly authorized representative of the Town and United Power shall have access to and the right to examine any directly pertinent non-confidential and non-privileged 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 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 Agreement 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. If an Open Records Act request is

made by any third party for confidential or proprietary information that United Power has provided to the Town pursuant to this Franchise Agreement, the Town will promptly notify United Power of the request and shall allow United Power to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action, United Power shall join the person requesting the information and the Town. United Power shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding. (Ord. 766 §1, 2011)

**13.24.260 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 Town and other reports the Town may from time to time request with respect to the operations of United Power under this Franchise. Such reports shall be marked "CONFIDENTIAL" by United Power and the Town shall keep the reports as confidential and not subject to public inspection, except as otherwise required by law. Such form of reports may be changed from time to time as mutually agreed between the Town and United Power. (Ord. 766 §1, 2011)

**13.24.270 Annual reports.**

United Power shall provide the Town 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 Town; 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 Town or affecting service to the Town and its residents. (Ord. 766 §1, 2011)

**13.24.280 Requested reports.**

Upon request by the Town, United Power shall provide the Town:

- A. A list of real property and leasehold interests in real property owned by United Power within the municipal boundaries of the Town, for the purpose of calculating property taxes.
- B. A map (and, to the extent available, a copy of such map and related data on computer disk or compatible electronic format) indicating the location of United Power distribution facilities within and contiguous to the Town.
- C. A report regarding the reliability of United Power facilities and electric service.
- D. A list of all Town electrical accounts and account numbers and items metered.
- E. A list of all street lights in the Town energized by United Power. (Ord. 766 §1, 2011)

**13.24.290 Copies of tariffs and regulatory filings.**

United Power shall notify the Town of all proposals to change rates relating to service by United Power to its customers located within the Town and pursuant to United Power's bylaws. Upon request by the Town, United Power shall provide the Town with copies of all rules, regulations, rate tariffs and policies. Town 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). (Ord. 766 §1, 2011)

**13.24.300 Adequate supply at lowest reasonable cost.**

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. (Ord. 766 §1, 2011)

**13.24.310 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 Town 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. (Ord. 766 §1, 2011)

**13.24.320 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 13.24.360 below, 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 hours prior to a planned outage. (Ord. 766 §1, 2011)

**13.24.330 Town participation.**

The Town shall have the right to approve major facility site plans within the Town. Upon reasonable notice to United Power, the Town shall have the right to hold public hearings related to United Power's facilities, site selection, undergrounding of overhead lines, construction and service quality. United Power agrees to fully participate in such public hearings as requested by the Town and to provide to the Town information available to United Power that relates to the hearings described in this Section. The foregoing shall not limit any rights of the Town under applicable law. (Ord. 766 §1, 2011)

#### **13.24.340 Compliance with Town requirements.**

Representatives of the Town and United Power shall meet annually to discuss annual and long-term planning for capital improvement projects contemplated by each within the Town. United Power shall include within its capital improvement projects the plans of the Town relating to same. United Power and the Town 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. (Ord. 766 §1, 2011)

#### **13.24.350 Excavation and construction.**

United Power shall be responsible for obtaining, paying for and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances and regulations of the Town. All construction, excavation, maintenance and repair work done by United Power shall be done in a timely manner, which minimizes inconvenience to the public and individuals. When United Power does any work in or affecting the Town Streets, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Town streets or other Town property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete restoration required by this Section, United Power may, with the approval of the Town, temporarily restore the affected Town streets or other Town property, provided that such temporary restoration is at United Power's sole expense and provided further that United Power promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. All restoration work under this Section shall be subject to inspection by the official Town representative and compliance by United Power with reasonable remedial action required by said official pursuant to inspection. Upon the request of the Town, United Power shall restore the streets or other Town property to a better condition than existed before the work was undertaken, provided that the Town shall be responsible for any additional costs of such restoration. If United Power fails to promptly restore the Town streets or other Town property as required by this Section, and if, in the reasonable discretion of the Town, immediate action is required for the protection of public health and safety, the Town may, upon giving reasonable notice to United Power that is commensurate with the danger posed, restore such Town streets or other Town property or remove the obstruction therefrom; provided however, Town actions do not unreasonably interfere with United Power facilities. United Power shall be responsible for and pay within thirty days of invoicing by the Town the actual cost incurred by the Town to restore such Town streets or other Town property or to remove any obstructions therefrom. In the course of its restoration of Town streets or other Town property under this Section, the Town shall not perform work on United Power facilities unless specifically authorized by United Power in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization. (Ord. 766 §1, 2011)

#### **13.24.360 Outages and restoration of service.**

A. Customer notification. United Power shall provide annually to the Town Manager, Chief of Police and Town Office of Emergency Management 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. Town notification. United Power shall provide to the Town daytime and nighttime telephone numbers of a designated United Power representative from whom the Town designee may obtain status information

from United Power on a twenty-four-hour basis concerning interruptions of electrical service in any part of the Town.

C. Restoration. In the event United Power's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, United Power shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if United Power elects not to restore such system. (Ord. 766 §1, 2011)

**13.24.370 Installation and maintenance of United Power facilities.**

A. United Power facilities. Except for emergencies, the construction, excavation, installation, maintenance, renovation, repair and replacement of any facilities by United Power shall be subject to permitting, inspection and approval of location by the official Town representative. Such regulation shall include, but not be limited to the following matters: location of facilities in the streets, alleys and dedicated easements; disturbance and reconstruction of pavement, sidewalks and surface of streets, alleys, dedicated easements and driveways. All United Power facilities shall be installed so as to cause a minimal amount of interference with such property. United Power facilities shall not interfere with any water mains or sewer mains or Town telecommunications facilities, traffic signal lights, parks or any other municipal use of the Town's streets and right-of-ways except to the extent the Town agrees in writing. United Power shall erect and maintain its facilities in such a way as to minimize interference with trees and other natural features and vegetation. United Power and all its subcontractors shall comply with all permitting, local regulations and ordinances. In emergency situations, United Power shall, after the fact, comply with permitting and inspection requirements of the Town. 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 Town and its residents.

B. Town projects. Where United Power performs construction projects requested by the Town, upon completion of the agreed work, United Power will provide a final detailed reconciliation report to the Town reconciling the original projected cost estimates to the actual costs incurred in completing the project. Such report will include sufficient detail to explain any material (a variance of more than ten percent) cost departures from the original estimate. (Ord. 766 §1, 2011)

**13.24.380 Obligations regarding United Power facilities.**

A. United Power facilities. All United Power facilities within Town streets and other Town property shall be maintained in good repair and condition.

B. United Power work within the Town. All work within Town streets and other Town property performed or caused to be performed by United Power shall be done:

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

4. Such that its facilities are constructed, maintained and operated in a manner which provides reasonable protection against injury or damage to persons or property.

C. Permit and inspection. The installation, renovation and replacement of any United Power facilities in the Town streets or other Town property by or on behalf of United Power shall be subject to permit, inspection and approval by the Town. Such inspection and approval may include, but shall not be limited to, the following matters: location of United Power facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks and surfaces of Town streets or other Town property. United Power agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

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

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. Town facilities. United Power shall reimburse the Town for the cost of upgrading the electrical system or facility of any Town building or facility that uses electric service where such upgrading is caused or occasioned by United Power's decision to increase the voltage of delivered electrical energy unless such change is caused by, requested or mandated by the Town.

F. As-built drawings. Upon reasonable written request of the Town designee, United Power shall provide, within thirty days of the request, as-built drawings of any United Power facility installed within or contiguous to Town streets or other Town property. 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 shall not be required to create drawings that do not exist at the time of the request. Such drawings shall be provided in hard copy and electronic format if available. (Ord. 766 §1, 2011)

#### **13.24.390 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 Town streets or in other Town property whenever the Town shall determine that such removal, relocation, change or alteration is necessary for the completion of any public project. For all relocations, United Power and the Town agree to cooperate on the location and relocation of United Power facilities in the Town streets or other Town property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once United Power has relocated any United Power Facility at the Town's direction, if the Town requests that the same United Power Facility be relocated within two years, the subsequent relocation shall not be at United Power's expense unless said subsequent relocation is necessary to remedy a public safety concern or an occurrence constituting force majeure arising after the initial relocation, or to comply with orders or requirements of state or federal highway authorities.

B. Private projects. United Power shall not be responsible for the expenses of any relocation required by the Town's direct or indirect assistance for private projects, and United Power has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

C. Relocation performance. The relocations set forth in Subsection A above shall be completed within a reasonable time, not to exceed ninety days from the later of the date on which the Town designee requests in writing that the relocation commence, or the date when United Power is provided all supporting documentation. For all relocations, United Power shall promptly upon request advise the Town in writing of any need for any additional supporting documentation or other information necessary for design or undertaking of the relocation. United Power shall be entitled to an extension of time to complete a relocation where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including without limitation fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. Upon request of United Power, the Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

D. Town revision of supporting documentation. Any revision by the Town of 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 the United Power facilities, restores the relocation site in accordance with Sections 13.24.350 and 13.24.360 of this Chapter or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of obligation. Except as otherwise set forth herein, the relocation obligation set forth in this Section shall only apply to United Power facilities located in Town streets or other Town property and shall not apply (i) to United Power facilities located on property owned by United Power in fee, and (ii) to United Power facilities located in privately owned easements or public utility easements, unless such public utility easements are on or in Town-owned property.

G. Underground relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless otherwise mutually agreed, or United Power is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the Town requests that such additional incremental cost be paid out of available funds under Sections 13.24.480—13.24.530.

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

I. Proposed alternatives or modifications. Upon receipt of written notice of a required relocation, United Power may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of United Power facilities. The Town shall in good

faith review the proposed alternative or modification. The Town's acceptance of the proposed alternative or modification shall be at the sole discretion of the Town. In the event the Town designee accepts the proposed alternative or modification, the United Power agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines that it has incurred as a direct result of implementing the proposed alternative. (Ord. 766 §1, 2011)

**13.24.400 Service to new areas.**

If, during the term of this Franchise, the boundaries of the Town are expanded within United Power's service area, United Power shall extend service to residents of the newly incorporated areas, and United Power shall be paid therefor, in accordance with United Power's extension policy set forth in its tariffs at the earliest practicable time. Service to annexed areas shall be in accordance with the terms of this Franchise Agreement, including payment of franchise fees as defined in Section 13.24.110 of this Chapter. (Ord. 766 §1, 2011)

**13.24.410 New or modified service to Town facilities.**

In providing new or modified electric service to Town facilities, United Power agrees to perform as follows:

A. Performance. United Power shall complete each project requested by the Town within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty days from the date upon which the Town designee makes a written request and provides the required supporting documentation as described in this Section. United Power shall be entitled to an extension of time to complete a project where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of United Power, the Town designee may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

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

C. Completion/restoration. Each such project shall be complete only when United Power actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise Agreement or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments. (Ord. 766 §1, 2011)

**13.24.420 Adjustments to United Power facilities.**

United Power shall perform adjustments to United Power facilities, including manholes and other appurtenances in Town streets and other Town property, to accommodate Town street maintenance, repair

and paving operations at no cost to the Town. In providing such 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 days from the date upon which the Town makes a written request and provides to United Power all information reasonably necessary to perform the adjustment. United Power shall be entitled to an extension of time to complete an adjustment where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the United Power, the Town may also grant the United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

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

C. Coordination. As requested by the Town or United Power, representatives of the Town and United Power shall meet regarding anticipated street maintenance operations which will require such adjustments to United Power facilities in Town streets or other Town property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section. (Ord. 766 §1, 2011)

#### **13.24.430 Third party damage recovery.**

A. Damage affecting Town reimbursement obligation. 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, including the Colorado Open Records Act, and subject to withholding of confidential and privileged information, the Town will notify United Power of any such incident and will provide to United Power within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

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

C. Meeting. United Power and the Town agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging United Power facilities. (Ord. 766 §1, 2011)

#### **13.24.440 Technological improvements.**

United Power may install future improvements and technological advances to its equipment and service within the Town, at United Power's discretion (but upon reasonable notice to the Town), when such

improvements and advances are technologically and economically feasible, and safe and beneficial to the Town. (Ord. 766 §1, 2011)

**13.24.450 Town regulation.**

The Town expressly reserves, and United Power expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such provisions, ordinances and rules and regulations as may be deemed necessary by the Town, in the exercise of its police power, to protect the health, safety and welfare of its citizens and their properties. (Ord. 766 §1, 2011)

**13.24.460 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. (Ord. 766 §1, 2011)

**13.24.470 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 Town, county, state and federal air and water pollution laws, and laws regulating transportation of hazardous materials. Upon the Town's request, United Power will provide the Town with a status report of such measures. (Ord. 766 §1, 2011)

**13.24.480 New lines undergrounded.**

United Power shall place all newly constructed electrical distribution lines underground unless approved otherwise by the Town. (Ord. 766 §1, 2011)

**13.24.490 Overhead conversion of electrical lines.**

United Power agrees to allocate an annual amount, equivalent to one and one-half percent of the preceding calendar year's revenues derived from customers within the Town, for the purpose of undergrounding United Power's existing overhead electric distribution facilities within the Town, at the expense of United Power, as requested by the Town (the "Undergrounding Funds"). Any unexpended portion of the one-and-one-half percent revenues shall be carried over to succeeding years. Until three years from the conclusion of this Agreement and upon request by the Town, United Power agrees to anticipate amounts to be available for up to three years in advance to be used to underground its overhead distribution facilities, as requested by the Town. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated. United Power shall only utilize Undergrounding Funds for projects for which it has received written approval from the Town. Except as provided in Subsection 13.24.390G of this Chapter, no relocation expenses which United Power would be required to expend pursuant to Sections 13.24.300—13.24.440 shall be charged to this allocation. United Power shall not withhold approval of the plans of the Town except where essential for safety, or protection of the operating integrity of United Power's electric system. If, after any and all undergrounding of United Power lines has taken place and no more United Power overhead lines remain in the Town, there are any Undergrounding Funds remaining, such funds may be used by the Town for other mutually agreed electric utility related projects in the Town mutually agreed upon by the Town and United Power. (Ord. 766 §1, 2011)

**13.24.500 Planning and coordination of undergrounding projects.**

The Town and United Power shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to Sections 13.24.480—13.24.530 of this Chapter as a part of the review and planning for other Town and United Power construction projects. In addition, the Town and United Power agree to meet, as required, to review the progress of then-current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the Town and United Power to achieve the orderly undergrounding of United Power facilities. At such meetings, the parties shall review:

- A. Undergrounding, including conversions, public projects and replacements which have been accomplished or are underway, together with United Power's plans for additional undergrounding; and
- B. Public projects anticipated by the Town.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the Town. (Ord. 766 §1, 2011)

**13.24.510 Cooperation with other utilities.**

When undertaking a project of undergrounding, the Town 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 Town. United Power shall not be required to pay for the cost of undergrounding the facilities of other companies or the Town. (Ord. 766 §1, 2011)

**13.24.520 Town requirement to underground.**

In addition to the provisions of Sections 13.24.480—13.24.530 of this Chapter, the Town may require any above ground United Power facilities to be moved underground at the Town's expense.

- A. Undergrounding performance. Upon receipt of a written request from the Town, 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.
- B. Performance. United Power shall complete each undergrounding project requested by the Town within a reasonable time, not to exceed one hundred eighty days from the later of the date upon which the Town designee makes a written request and the date the Town provides to United Power all supporting documentation. United Power shall be entitled to an extension of time to complete each undergrounding 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 Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

C. Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to United Power that causes United Power to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the Franchise.

D. Completion/restoration. Each such undergrounding project shall be deemed complete only when United Power actually undergrounds the designated United Power facilities, restores the undergrounding site in accordance with Sections 13.24.350 and 13.24.360 of this Chapter or as otherwise agreed with the Town designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

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

F. Report of actual costs. Upon completion of each undergrounding project, United Power shall submit to the Town a detailed report of United Power's actual cost to complete the project and United Power shall reconcile this total actual cost with the accepted cost estimate.

G. Audit of underground projects. The Town may require that United Power undertake an independent audit of any undergrounding project for five hundred thousand dollars 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 Town and United Power a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs, including reasonable internal costs and overhead as charged to the project by United Power's normal cost accounting rules and protocols, confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged to the fund. Upon written request of the Town, but no more frequently than once a year, United Power shall provide the Town with a report detailing the amounts in the underground fund and identifying amounts encumbered for current projects. (Ord. 766 §1, 2011)

#### **13.24.530 Audit of underground fund.**

Upon written request of the Town, but no more frequently than once every three years, United Power shall audit the fund for the Town. Such audits shall be limited to the previous three calendar years. United Power shall provide the audit report to the Town and shall reconcile the fund consistent with the findings contained in the audit report. If the Town has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the Town's reasonable satisfaction, United Power shall, at its expense, cause an independent auditor, selected by agreement with the Town, to investigate and determine the correctness of the charges to the underground fund. The independent auditor shall provide a written report containing its findings to the Town and United Power. United Power 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 Town shall be responsible for fifty percent of the cost for the independent auditor's work and report. (Ord. 766 §1, 2011)

### **13.24.540 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. (Ord. 766 §1, 2011)

### **13.24.550 Energy conservation and efficiency.**

#### **A. Energy efficiency programs.**

1. General. The Town and United Power recognize and agree that energy conservation and efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. United Power recognizes and shares the Town's desire to advance the implementation of cost-effective energy conservation and efficiency programs, which direct opportunities to United Power's customers to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs and impact on the environment. United Power 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 recommissioning programs to analyze existing systems to optimize performance and conserve energy. United Power shall advise the Town and United Power's customers of the availability of assistance that United Power makes available for investments in energy conservation, and may do so through dissemination of such information through its District Representatives, newsletters, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information of these programs on the United Power's website. United Power will cooperate with the Town, consistent with applicable law respecting any Town initiatives, to install and use solar power or other alternative energy sources in Town buildings and facilities.

2. Town improvements. United Power agrees to work with the Town to implement periodic grant or other financial assistance programs or mechanisms to assist the Town in defraying costs incurred by the Town in making technology changes and/or modifications to Town facilities or purchasing equipment to provide energy efficiencies and/or conservation. 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 undergrounding 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 Town and United Power's customers in available renewable resource programs.

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

C. Five-year review. The Town and United Power agree to meet no less frequently than every five 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 Sections 13.24.540 and 13.24.550 above. (Ord. 766 §1, 2011)

#### **13.24.560 Town use of United Power facilities.**

The Town shall be permitted to make use of United Power's distribution facilities such as poles and conduits in the Town at no cost to the Town for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, communications, public safety or traffic control purpose, or for any other purpose consistent with exercise of the Town's municipal powers and services. The Town shall notify United Power in writing in advance of its intent to use United Power facilities and the nature of such use. The Town shall be responsible for its materials costs and any costs associated with modifications to United Power facilities to accommodate the Town's joint use of such United Power facilities and for any electricity used. No such use of United Power facilities shall be required if it would constitute a safety hazard or would interfere with United Power's use of United Power facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations. Subsequently, if United Power determines that it will no longer utilize the shared facilities, Town will be responsible, at its cost, for procuring alternatives for its facilities. United Power will be required to provide at least one hundred eighty 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. (Ord. 766 §1, 2011)

#### **13.24.570 Use of United Power land.**

United Power shall grant to the Town use of distribution and transmission rights-of-way which it now, or in the future, owns or has an interest in within the Town for the purposes set forth in the Colorado Parks and Open Space Act of 1984, 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 days' advance notice of the Town's

desired use. Any use by the Town pursuant to this Section shall be made at the Town's sole expense, and shall be subject to any safety or other requirements imposed by United Power. The Town hereby expressly understands that United Power's rights-of-way contain electrical lines that could prove deadly if contact is made with any electrical current. This Section is not intended and shall not be construed to revoke or affect any prior license, grant or right previously given to use United Power distribution or transmission rights-of-way. The Town shall indemnify United Power against any claim, demand or lien associated with the Town's use of United Power's distribution and transmission rights-of-way, conduits and poles, to the extent permitted by law and to the extent arising out of the negligent or willful or wanton act or omission of the Town or any of its officers or employees. (Ord. 766 §1, 2011)

**13.24.580 Third party use of United Power facilities.**

If requested in writing by the Town, United Power may allow other companies who hold Town franchises or otherwise have obtained consent from the Town to use the streets, to utilize United Power facilities for the placement of their facilities upon approval by United Power and agreement upon reasonable terms and conditions, including payment of fees established by United Power. No such use shall be permitted if it would constitute a safety hazard or would interfere with United Power's use of United Power facilities. 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. (Ord. 766 §1, 2011)

**13.24.590 Emergencies.**

Upon request, United Power will cooperate with the Town in developing an emergency management plan. In the case of any emergency or disaster, United Power shall, upon verbal request of the Town, make available United Power facilities for temporary emergency use during the emergency or the disaster period. Such use of United Power facilities shall be of a limited duration and will only be allowed if the use does not interfere with United Power's own use of such United Power facilities. (Ord. 766 §1, 2011)

**13.24.600 Right of first purchase.**

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

price, in which instance the Town shall have thirty days to determine if it wishes to purchase such property. (Ord. 766 §1, 2011)

**13.24.610 Town held harmless.**

United Power shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this Franchise, the exercise by United Power of the related rights, or from the operations of United Power within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to United Power of any claim, demand or lien with respect to which the Town seeks indemnification hereunder, and (b) unless in the Town's judgment a conflict of interest may exist between the Town and United Power with respect to such claim, demand or lien, shall permit United Power to assume the defense of such claim, demand or lien with counsel satisfactory to the Town. If such defense is assumed by United Power, United Power shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by United Power or if the Town 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 Town 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 Town or any of its officers or employees. (Ord. 766 §1, 2011)

**13.24.620 Town liability and immunity.**

The Town shall be responsible for liability and damages associated with its own acts and omissions in the manner and to the extent provided by applicable law. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (Section 24-10-101, et seq., C.R.S.) or of any other defenses, immunities or limitations of liability available to the Town by law. (Ord. 766 §1, 2011)

**13.24.630 Consent of Town 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 Town shall approve in writing such sale, transfer or assignment of rights. Approval of the sale, transfer or assignment shall not be unreasonably withheld. The charging or collection of the transfer fee hereinafter set forth is conclusively deemed reasonable.

B. In order that the Town may share in the value this Franchise adds to United Power's operations, any such transfer or assignment by United Power of rights under this Franchise requiring Town approval under Subsection 13.24.630A. shall require that the transferee promptly pay to the Town an amount that is equal to the lesser of (i) three dollars per metered account located within the franchise area, or (ii) three times the most recent twelve months of franchise fees collected by the Town from United Power. In the event only a portion of United Power's service area within the Town is transferred, the transfer fee shall be calculated by multiplying the greater of (i) and (ii) above by the number of customers transferred, divided by the then current number of customers served by United Power in the Town before said transfer. Such transfer fee shall not be recovered from the Town or from the Town residents or property owners through electric rates of customers in the Town or by a surcharge of the residents of the Town by the transferee or United Power.

C. Any sale, transfer or assignment of electric facilities, 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 Town customers, shall constitute a violation of this Franchise. (Ord. 766 §1, 2011)

**13.24.640 Municipally produced utility service.**

A. Town reservation. The Town 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 Town-generated power made available for sale, including without limitation contracts for rebates, bill credits and/or net metering in relation to solar, wind or other renewable energy resources generated by the Town at its facilities, consistent with established United Power Board requirements and considering the then existing agreements with United Power's current providers.

B. Franchise not to limit Town's rights. Nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law. (Ord. 766 §1, 2011)

**13.24.650 Town's right to purchase or condemn.**

The right of the Town to construct, purchase or condemn any public utility works or ways, and the right of United Power in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved. The Town shall have the right during the term of this Franchise, and using the procedures set forth herein, to purchase United Power facilities, land, rights-of-way and easements now owned or to be owned by United Power located within the territorial boundaries of the Town. (Ord. 766 §1, 2011)

**13.24.660 Notice of intent to purchase or condemn.**

The Town shall provide United Power no less than one 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 Town's purchase or condemnation of United Power facilities. (Ord. 766 §1, 2011)

**13.24.670 Negotiated purchase price or condemnation award.**

Upon the exercise of the Town's option to purchase, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. This purchase price will be 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 Town and United Power cannot reach agreement as to the purchase price or acceptable payment terms within ninety days after commencement of negotiations, the Town 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 Town attributable to the improvements, fixtures, betterments, antennas, equipment and all other things, and rights of United Power. (Ord. 766 §1, 2011)

**13.24.680 Continued cooperation by United Power.**

A. In the event the Town exercises its option to purchase or condemn, United Power agrees that it will continue to supply in whole or in part any service it supplies under this Franchise Agreement and the

ordinance adopting the same, at the Town's request, for the duration of the term of this Agreement. United Power's facilities shall be available for continued service until nine months after final order is entered in a condemnation proceeding or the effective date of a purchase agreement between the parties; provided however, said obligation to maintain facilities shall not exceed a twenty-four-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 months until the Town has either purchased or condemned United Power's facilities, or alternative arrangements have been made to supply electricity to the Town and its residents, whichever date shall occur earlier. The Town shall not pay for any services no longer required.

B. United Power shall cooperate with the Town by making available then existing pertinent United Power records, which are not privileged, to enable the Town to evaluate the feasibility of acquiring United Power facilities. United Power shall not be obligated to conduct studies or accrue data without reimbursement by the Town, but will make such studies if reimbursed its actual costs for the same. United Power shall take no action which could inhibit the Town's ability to effectively or efficiently use the acquired systems. At the Town's request, United Power shall supply electricity for use by the Town in a Town-owned system. (Ord. 766 §1, 2011)

#### **13.24.690 Changing conditions.**

United Power and the Town recognize that many aspects of the electric utility business are currently the subject of discussion, examination and inquiry by different segments of industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way United Power conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, United Power and the Town agree, on request of the other, to negotiate in good faith an amendment of this Franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of such developments. (Ord. 766 §1, 2011)

#### **13.24.700 Uncontrollable forces.**

Neither the Town nor United Power shall be in breach of this Franchise Agreement if a failure to perform any of the duties under this Franchise is due to uncontrollable forces, which shall include but not be limited to accidents, breakdown of equipment, shortage of materials, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government 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. (Ord. 766 §1, 2011)

#### **13.24.710 Noncontestability.**

The Town and United Power agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed and, except as may be specifically provided in this Franchise Agreement, neither will take any unilateral legal action to secure the modification or amendment of this Franchise. (Ord. 766 §1, 2011)

#### **13.24.720 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 days, in which to remedy the

breach and except as provided under Section 13.24.700 above. 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. (Ord. 766 §1, 2011)

**13.24.730 Termination of Franchise by Town.**

In addition to the foregoing remedies, if United Power fails or refuses to perform any material term or condition of this Franchise (a "material breach"), and such failure is not an occurrence by force majeure under Section 13.24.700 above, the Town may provide written notice to United Power of such material breach. Upon receipt of such notice, United Power shall be given a reasonable time, not to exceed ninety days, within which to remedy the material breach. If United Power does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this Franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, United Power shall continue to provide electric service to the Town and its residents until the Town makes alternative arrangements for such service and be paid for such service in accordance with United Power's bylaws. United Power shall also be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for use of the Town streets. (Ord. 766 §1, 2011)

**13.24.740 United Power shall not terminate Franchise.**

In no event, other than caused by the Town's material breach of this Agreement, does United Power have the right to terminate this Franchise but may transfer its rights hereunder after notice to Town and as otherwise set forth in Section 13.24.630 of this Chapter. (Ord. 766 §1, 2011)

**13.24.750 No limitation.**

Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this Franchise. (Ord. 766 §1, 2011)

**13.24.760 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 Section 40-9.5-101, et seq., C.R.S. This Section 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. (Ord. 766 §1, 2011)

**13.24.770 Amendment to Franchise.**

This Franchise Agreement represents the entire Franchise Agreement between the parties and there are no oral or collateral agreements or understandings.

This Franchise Agreement may be amended only by an instrument in writing signed by United Power and the Town. (Ord. 766 §1, 2011)

**13.24.780 Proposed amendments.**

At any time during the term of this Franchise, the Town or United Power may propose amendments to this Franchise by giving thirty days' written notice to the other of the proposed amendment(s) desired. However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party. (Ord. 766 §1, 2011)

**13.24.790 Equal opportunity.**

United Power is an equal opportunity employer. United Power will comply with all federal, state and Town laws regarding employment, contracting and operating its business activities with a policy of non-discrimination with people of all race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability or any other protected status in accordance with all federal, state or local laws. (Ord. 766 §1, 2011)

**13.24.800 Contracting.**

United Power agrees to require all of its contractors to comply with all federal, state and Town laws regarding employment, contracting and operating their business activities with regards to non-discrimination with people of all race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability or any other protected status in accordance with all federal, state or local laws. (Ord. 766 §1, 2011)

**13.24.810 Economic development.**

The parties agree that promoting economic development with the Town is in the best interest of all parties. United Power is committed to the principle of stimulating, cultivating and strengthening the participation and representation of under-represented groups in the local Firestone 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. (Ord. 766 §1, 2011)

**13.24.820 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 Town laws prohibiting the employment of, or contracting with, undocumented workers or illegal aliens. (Ord. 766 §1, 2011)

**13.24.830 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. (Ord. 766 §1, 2011)

**13.24.840 Affirmative action.**

United Power agrees to take affirmative action to ensure 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 Town 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 Town and the related documents maintained by United Power.

2. United Power shall, within twenty 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 Town on or before its filing with the Department. (Ord. 766 §1, 2011)

**13.24.850 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 Town within three 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 days of receiving the notice required pursuant to Paragraph 13.24.850C.1 above, 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 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. (Ord. 766 §1, 2011)

**13.24.860 Compliance.**

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

A. Inspections and/or interviews at such locations as this contract 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. (Ord. 766 §1, 2011)

**13.24.870 Documentation.**

United Power shall, upon request, provide to the Town copies of documentation and verification of immigration status and employment eligibility received by United Power for itself or from subcontractors; and, if requested, copies of information received from a subcontractor submitted to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. (Ord. 766 §1, 2011)

**13.24.880 Violation.**

If United Power violates a provision of Sections 13.24.820—13.24.870 above, such violation may constitute a material breach of this Franchise Agreement and the Town, in its sole discretion, may terminate the Franchise for breach of contract. If the Franchise is so terminated, United Power shall be liable for actual damages to the Town. (Ord. 766 §1, 2011)

**13.24.890 No waiver.**

Neither the Town nor United Power shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions. Further, neither the Town nor United Power waives any rights under the laws, statutes and/or constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein. (Ord. 766 §1, 2011)

**13.24.900 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 Section 13.24.630 of this Chapter. (Ord. 766 §1, 2011)

**13.24.910 Notice and representatives.**

Both parties shall designate from time to time, in writing, representatives for United Power and the Town who will be the person(s) to whom notices shall be sent regarding any action to be taken under this Agreement. Notice shall be in writing and forwarded by 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 Town of Firestone:

Town Manager  
151 Grant Avenue, Box 100  
Firestone, CO 80520

With a faxed copy to: (303) 833-4863.

For United Power:

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

With a faxed copy to: (303) 659-2172.

(Ord. 766 §1, 2011)

**13.24.920 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. (Ord. 766 §1, 2011)

**13.24.930 Entire agreement.**

This Agreement constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Agreement. (Ord. 766 §1, 2011)

**13.24.940 Third parties, rights to third parties.**

Nothing herein contained shall be construed to provide rights or benefits to third parties. (Ord. 766 §1, 2011)

**13.24.950 No fee-shifting provision.**

In any judicial or administrative action to enforce any of the terms or conditions of this Franchise Agreement, each party shall be responsible for its own costs and expenses incurred in such action, including reasonable attorney fees, unless the same are otherwise awarded to a party pursuant to statute or Court rule. (Ord. 766 §1, 2011)

**13.24.960 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. (Ord. 766 §1, 2011)

**13.24.970 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. (Ord. 766 §1, 2011)

**13.24.980 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. Each party represents and warrants that the person executing this Agreement on behalf of it has full authorization to execute this Agreement. (Ord. 766 §1, 2011)

**13.24.990 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 Adams County, State of Colorado. (Ord. 766 §1, 2011)

**13.24.1000 Reserved rights.**

The right is hereby reserved by the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power to protect the health, safety and welfare of the public, including but not limited to ordinances to control and regulate the use of the streets and other Town property and the space above and beneath the same. Neither the Town nor the Grantee waives any rights under the statutes and Constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein. (Ord. 766 §1, 2011)

**13.24.1010 Town approval.**

This Franchise Agreement shall become effective only upon the effectiveness of this ordinance. (Ord. 766 §1, 2011)

**13.24.1020 United Power approval.**

United Power shall file with the Town Clerk its written approval of this Franchise and of all of its terms and provisions at least ten days prior to public hearings set for consideration of the ordinance by the Town Board. United Power shall file with the Town Clerk its written ratification thereof within ten days after the approval of this Franchise Agreement by the Town Board. The acceptance and ratification shall in form and content be approved by the Town Attorney. If United Power shall fail to timely file its written acceptance or ratification as herein provided, this Franchise shall be and become null and void. (Ord. 766 §1, 2011)

**13.24.1030 Ordinance repealed.**

Ordinance No. 285, passed under date of February 22, 1991, and codified in Chapter 13.24 of the Firestone Municipal Code, is hereby repealed and of no further force or effect. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are repealed to the extent of such inconsistency or conflict. (Ord. 766 §1, 2011)

**13.24.1040 Accrued liabilities.**

The repeal or of any provision of the Firestone Municipal Code of the Town of Firestone by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for the enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions. (Ord. 766 §1, 2011)