

AGENDA
TOWN OF HUDSON - BOARD OF TRUSTEES
REGULAR MEETING
November 18, 2015 - 6:00 P.M.

PLEDGE OF ALLEGIANCE

CALL TO ORDER AND ROLL CALL

ADDITIONS TO AGENDA

CITIZEN'S COMMENTS

1) CONSENT AGENDA

(Consent Agenda Items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member or Citizen so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Regular Agenda.)

- a. Board of Trustees Minutes – Regular Meeting, November 4, 2015
- b. Payment of Bills
- c. Liquor License Renewal – End of the Trail dba Rough Rider Saloon

2) PUBLIC HEARING

- a. Update to the Floodplain Overlay District in Section 16-146(c)(2) of the Hudson Land Development Code to be in compliance with the National Flood Insurance Program,

3) GENERAL BUSINESS

- a. Ordinance No. 15-13, Second Reading, United Power franchise renewal
- b. Ordinance No. 15-14, Second Reading, An Ordinance Amending the Hudson Municipal Code concerning updated Flood Insurance Rate Maps
- c. Approval job description – Deputy Marshal
- d. Bid Award – Street repairs
- e. Report: DRAFT Memorandum of Understanding and Contribution Agreement with Kerr McGee Oil & Gas Onshore LP
- f. Resolution 15-29, A Resolution to Cancel the Regular Board of Trustees Meeting on December 16, 2015
- g. Resolution 15-28, A Resolution setting procedures for the Christmas Bonus compensation for employees of the Town of Hudson

4) STAFF REPORTS

5) ADJOURNMENT

MINUTES
TOWN OF HUDSON - BOARD OF TRUSTEES
REGULAR MEETING
November 4, 2015 - 6:00 P.M.

PLEDGE OF ALLEGIANCE

CALL TO ORDER AND ROLL CALL

Mayor Patch called the meeting to order at 6:00 p.m.

ROLL CALL

Mayor, Raymond Patch - Present
Trustee, Matt Cole – Present
Trustee, Laura Hargis – Present
Trustee, Christine Hamilton – Present
Trustee, Julia Stell – Present
Trustee, Terri Davis – Present
Trustee, Maria Chavez - Absent

Town Clerk/Treasurer, Linnette Barker took roll call, and a quorum of the Mayor Pro-Tem and (5) Trustees were present.

Town Staff Present:

Town Administrator – Joe Racine
Town Attorney – Corey Hoffmann
Town Clerk/Treasurer– Linnette Barker
Economic Development Director – Dan Hamsmith
Public Works Director – Ron Allen
Utility Director – Hunter Fobare
Public Safety Director – Brent Flot

ADDITIONS TO AGENDA

CITIZEN'S COMMENTS

David Hudson, Hudson Fire Protection District representative, reported that the Hudson Fire Protection District ballot issue 5B did not pass at the November 3, 2015 coordinated election. Mr. Hudson reported that the Fire District has hired three new career firefighters, one for each shift and three volunteer firefighters started in October. The mutual aid agreements are in place with Ft. Lupton. The fire department has been on 627 calls for service to date.

1) CONSENT AGENDA

(Consent Agenda Items are considered routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member or Citizen so requests, in which case the items may be removed from the Consent Agenda and considered at the end of the Regular Agenda.)

- a. Board of Trustees Minutes, Regular Meeting, October 21, 2015
- b. Payment of Bills

Trustee Hargis made a motion, seconded by Trustee Cole to approve the Consent Agenda.

The vote was as follows:

Aye: Trustees Hargis, Cole, Hamilton, Stell, Davis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

2) PUBLIC HEARING

a. 2016 Budget

Mayor Patch opened the Public Hearing for the 2016 Budget at 6:12 pm.

Joe Racine, Town Administrator, reported on the 2016 Preliminary Budget estimates revenues and expenses for both 2015 and 2016. The final budget will be considered on December 2, 2015.

No public comment.

Mayor Patch closed the Public Hearing at 6:14 pm.

3) GENERAL BUSINESS

a. Ordinance No. 15-13, Second Reading, United Power franchise renewal

Trustee Hargis made a motion, seconded by Trustee Davis to continue Ordinance No. 15-13, Second Reading, United Power franchise renewal until November 18, 2015.

The vote was as follows:

Aye: Trustees Hargis, Davis, Cole, Hamilton, Stell and Mayor Patch

Nay – Trustee Cole

Mayor Patch declared the motion carried.

b. Resolution No. 15-27, Intergovernmental Agreement with Weld County regarding the CR 49 Access Control Plan

Joe Racine, Town Administrator, reported this intergovernmental agreement is between Weld County, Hudson, Keenesburg and Kersey. The agreement significant provisions of the agreement are:

- A Change of use of existing accesses may trigger the need for closure, consolidation, modification or relocation according to the plan.
- Changes to existing and new accesses to the road by a property in the Town will require approval by both the Town and by the County, based on the provisions of the plan and by an engineer. County approval cannot be reasonably withheld. Determination of such accesses must be made within 30 days.

- A "Plan Advisory Committee," made up of the four parties to the plan, will consider plan amendments and updates. A $\frac{3}{4}$ vote is required to amend the plan.
- If the Town decides to terminate the IGA, it is liable to reimburse the County for the depreciated cost of construction, right of way acquisition and maintenance of the roadway within the Town.

Trustee Hamilton made a motion, seconded by Trustee Hargis to approve Resolution 15-27, A Resolution approving a Weld County Road 49 Access Control Plan Intergovernmental Agreement among the Town of Hudson, the Town of Keenesburg, the Town of Kersey, and Weld County.

The vote was as follows:

Aye: Trustees Hamilton, Hargis, Cole, Stell, Davis and Mayor Patch

Nay – Trustee Cole

Mayor Patch declared the motion carried.

c. Professional Management Solutions, agreement for professional services

Joe Racine, Town Administrator, reported that the Town has contracted with Lorraine Trotter from Professional Management Solutions for several years. This agreement Lorraine would be on a regular monthly fee for up to six hours per month of financial oversight and an hourly basis for audit consulting.

Trustee Stell made a motion, seconded by Trustee Hargis to approve the Professional Management Solutions agreement for professional services.

The vote was as follows:

Aye: Trustees Stell, Hargis, Davis, Cole, Hamilton and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

d. Clear Water Solutions, agreement for professional services

Joe Racine, Town Administrator, reported this is the agreement for professional services with Clear Water Solutions, Inc. for water resource engineering services.

Trustee Cole made a motion, seconded by Trustee Stell to approve the professional service agreement with Clear Water Solutions.

The vote was as follows:

Aye: Trustees Cole, Stell, Davis, Hamilton, Hargis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

e. Agreement with Front Range Resources for annexation study expenses

Joe Racine, Town Administrator, reported that the Town has been approached by Front Range Resources, LLC, regarding possible annexation of 3,400 acres of land located north of Hudson. The landowner and staff have negotiated an agreement, providing for up to \$50,000 in reimbursement for consultant expenses related to examination of the pros and cons of the proposal. There may yet be minor changes to the draft agreement.

Trustee Hargis made a motion, seconded by Trustee Cole to approve the agreement with Front Range Resources for annexation study expenses in substantially the form as presented.

The vote was as follows:

Aye: Trustees Hargis, Cole, Hamilton, Stell, Davis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

f. Resolution 15-28, A Resolution setting procedures for the Christmas Bonus compensation for employees of the Town of Hudson

Trustee Hargis made a motion, seconded by Trustee Cole to table Resolution 15-28, A Resolution setting procedures for the Christmas Bonus compensation for employees of the Town of Hudson until November 18, 2015.

The vote was as follows:

Aye: Trustees Hargis, Cole, Stell, Hamilton, Davis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

g. Ordinance No. 15-14, First Reading, An Ordinance Amending the Hudson Municipal Code concerning updated Flood Insurance Rate Maps

Joe Racine, Town Administrator, reported that Ordinance 15-14 amends the code to refer to three new map panels that are of concern to Hudson. The new editions of the Flood Insurance Rate Maps will take effect on January 20, 2016.

Trustee Hargis made a motion, seconded by Trustee Stell to approve Ordinance No. 15-14, First Reading, An Ordinance amending the Hudson Municipal Code concerning updated Flood Insurance Rate Maps.

The vote was as follows:

Aye: Trustees Hargis, Stell, Cole, Hamilton, Davis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

3) STAFF REPORTS

Ron Allen, Public Works Director, reported that the old shop is being removed. There was no asbestos found on the property.

Hunter Fobare, Utility Director, reported that the RO booster pump is being replaced. He is working on some electrical issues at the vault.

Dan Hamsmith, Economic Development Director, reported that 125-150 kids showed up for the Trunk or Treat event. One person showed up for the Comprehensive Plan Open House event. The Veterans Day Commemoration is this Saturday from 10:00 am until 10:30 am. The Town Hall Lighting will be held on December 4, 2015 from 6:00 – 8:00 pm.

Brent Flot, Public Safety Director, reported that he has been working on a MOU with Douglas County for the sex offender system. He will be meeting with the Weld County Commissioners regarding radio dispatch service. He will be picking up the Dodge Charger purchased from the Town of Lochbuie. Weld County Sheriff's Department responded to twelve calls in Hudson last month.

ADJOURNMENT

The meeting adjourned at approximately 7:11 p.m.

TOWN OF HUDSON, COLORADO

Mayor

ATTEST

Town Clerk

Report Criteria:

Report type: GL detail

Check_Type = {<>} "Adjustment"

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
11/10/2015	51134	1276	Town of Lochbuie	111015	2010 Dodge Charger	10-66-7734	9,000.00
Total 51134:							9,000.00
11/13/2015	51135	1279	Allied Recycle Aggregates	254090	CR 41 Material	23-71-7710	14,522.34
Total 51135:							14,522.34
11/13/2015	51136	1049	Allwater Supply LLC	3672	RO Screens	70-68-6710	429.56
Total 51136:							429.56
11/13/2015	51137	4	Andersen's Star Market	110215	Lab Supplies	75-68-6710	32.47
11/13/2015	51137	4	Andersen's Star Market	110215	Supplies	75-68-6710	7.79
11/13/2015	51137	4	Andersen's Star Market	110215	Supplies	75-68-6710	20.69
11/13/2015	51137	4	Andersen's Star Market	110215	PW Meetings	10-68-6210	17.96
Total 51137:							78.91
11/13/2015	51138	45	AT&T	110415-0202	Long Distance Service	10-64-6410	64.18
11/13/2015	51138	45	AT&T	110415-0202	Long Distance Service	10-68-6410	32.10
11/13/2015	51138	45	AT&T	110415-0202	Long Distance Service	70-64-6410	32.10
11/13/2015	51138	45	AT&T	110415-0202	Long Distance Service	70-68-6710	32.09
Total 51138:							160.47
11/13/2015	51139	1216	Blue Tarp Financial Inc.	46541947	Truck Ladder	75-68-6710	49.99
11/13/2015	51139	1216	Blue Tarp Financial Inc.	46541947	Truck Ladder	70-68-6710	49.99
Total 51139:							99.98
11/13/2015	51140	1041	Caselle Inc.	69179	Contract Support and Maintenance - December 2015	10-64-6740	262.50
11/13/2015	51140	1041	Caselle Inc.	69179	Contract Support and Maintenance - December 2015	70-64-7733	131.25
11/13/2015	51140	1041	Caselle Inc.	69179	Contract Support and Maintenance - December 2015	75-64-7733	131.25
Total 51140:							525.00
11/13/2015	51141	36	Colorado Analytical Laboratories I	151020035	Wastewater Well	75-68-6633	90.00
11/13/2015	51141	36	Colorado Analytical Laboratories I	151020037	Water Samples	70-68-6633	156.60
11/13/2015	51141	36	Colorado Analytical Laboratories I	151028046	Wastewater Samples	75-68-6633	111.60
11/13/2015	51141	36	Colorado Analytical Laboratories I	151103080	Water Samples	70-68-6633	39.40
Total 51141:							397.60
11/13/2015	51142	1231	Contractors Equipment Center	1041712-001	Rent Roller for CR 41	23-71-7710	834.09
Total 51142:							834.09
11/13/2015	51143	437	Daniel Hamsmith	111215	May 2015 - Mileage	10-64-6213	55.21
11/13/2015	51143	437	Daniel Hamsmith	111215	June 2015 - Mileage	10-64-6213	225.98

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
11/13/2015	51143	437	Daniel Hamsmith	111215	July 2015 - Mileage	10-64-6213	244.38
11/13/2015	51143	437	Daniel Hamsmith	111215	Chamber Luncheons	10-64-6212	20.00
11/13/2015	51143	437	Daniel Hamsmith	111315	August 2015 - Mileage	10-64-6213	75.91
11/13/2015	51143	437	Daniel Hamsmith	111315	September 2015 - Mileage	10-64-6213	72.46
11/13/2015	51143	437	Daniel Hamsmith	111315	October 2015 - Mileage	10-64-6213	136.85
Total 51143:							830.79
11/13/2015	51144	33	DPC Industries Inc.	737004881-1	Chemicals - Sodium Bisulfite	75-68-6710	475.80
11/13/2015	51144	33	DPC Industries Inc.	737004882-1	Chemicals - Sodium Hyp	75-68-6710	918.75
Total 51144:							1,394.55
11/13/2015	51145	1194	Envirotech Services Inc.	100515	CR 41 & CR 8 Project	23-71-7710	5,439.00
Total 51145:							5,439.00
11/13/2015	51146	503	Flowmation Inc.	3543	Fort Lupton Meter Vault	70-68-6710	820.00
Total 51146:							820.00
11/13/2015	51147	57	Front Range Internet	1402346	Website Hosting & Maintenance	10-64-6415	122.90
Total 51147:							122.90
11/13/2015	51148	22	Hoffmann Parker Wilson & Carber	103115-4080	Legal Services - Administration	10-64-6630	4,608.60
11/13/2015	51148	22	Hoffmann Parker Wilson & Carber	103115-4080	Legal Services - Community Development	10-64-6630	676.50
11/13/2015	51148	22	Hoffmann Parker Wilson & Carber	103115-4080	Legal Services - Municipal Court	10-62-6630	445.50
11/13/2015	51148	22	Hoffmann Parker Wilson & Carber	103115-4080	Legal Services - Library Litigation	25-64-6630	57.75
11/13/2015	51148	22	Hoffmann Parker Wilson & Carber	103115-4080	Legal Services - Library Litigation	10-64-6630	57.75
Total 51148:							5,846.10
11/13/2015	51149	210	Humane Society of Weld County	7978	Animal Contract Billing	10-66-6633	275.00
Total 51149:							275.00
11/13/2015	51150	117	J&S Contractors Supply Co.	0055814-IN	Blades for Grader	10-68-6710	230.40
Total 51150:							230.40
11/13/2015	51151	276	Joe Racine	110215	Mileage	10-64-6213	18.97
11/13/2015	51151	276	Joe Racine	110215	Medicare Reimbursement	10-64-6110	149.90
11/13/2015	51151	276	Joe Racine	110215	Computer, Camera Phone	10-64-6633	50.00
Total 51151:							218.87
11/13/2015	51152	1105	Keene Auto Supply Inc.	346532	Tools	70-68-6735	51.99
11/13/2015	51152	1105	Keene Auto Supply Inc.	346532	Tools	75-68-6735	51.99
Total 51152:							103.98
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Town	10-64-6640	1,538.87
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Library Beech Street	23-71-6640	92.00
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Water	70-64-6640	23.25
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - BNSF Feasibility Study	10-64-6640	22.05

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Flood Plain Permit	10-64-6636	668.25
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Love's Hotel	10-64-6636	220.50
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Hudson Hills	10-64-6636	255.75
11/13/2015	51153	840	Ketterling Butherus & Norton Engi	1131-002/00	Hudson Water System Model	70-71-6640	1,750.00
Total 51153:							4,570.67
11/13/2015	51154	492	Linnette Barker	111315	Cell Phone - October & November 2015	10-64-6410	50.00
11/13/2015	51154	492	Linnette Barker	111315	Mileage - Benefits Meeting	10-64-6213	11.50
Total 51154:							61.50
11/13/2015	51155	853	Love's Travel Stops & County Stor	636984892	Fuel - Code Enforcement	10-66-6416	239.93
11/13/2015	51155	853	Love's Travel Stops & County Stor	636984892	Fuel - PW Department	10-68-6416	1,105.51
11/13/2015	51155	853	Love's Travel Stops & County Stor	636984892	Fuel - Water Department	70-68-6416	252.77
11/13/2015	51155	853	Love's Travel Stops & County Stor	636984892	Fuel - WW Department	75-68-6416	143.11
Total 51155:							1,741.32
11/13/2015	51156	1186	Pinnacle Bank	110115-4035	CMCA Conference	10-64-6210	700.00
11/13/2015	51156	1186	Pinnacle Bank	110115-4035	New Employee Background Check	10-68-6710	6.85
Total 51156:							706.85
11/13/2015	51157	1187	Pinnacle Bank - 2	110115-4076	11x17 Paper - Newsletter	10-69-6620	53.36
11/13/2015	51157	1187	Pinnacle Bank - 2	110115-4076	BOT Picture Frames	10-61-6415	9.99
Total 51157:							63.35
11/13/2015	51158	1188	Pinnacle Bank - 3	110115-4050	Snake Chaps - Marc & Hunter	75-68-6710	159.90
11/13/2015	51158	1188	Pinnacle Bank - 3	110115-4050	Snake Chaps - Scott	10-68-6710	58.95
Total 51158:							218.85
11/13/2015	51159	1189	Pinnacle Bank - 4	110115-4043	Monthly PW Meeting	10-68-6212	70.84
Total 51159:							70.84
11/13/2015	51160	1190	Pinnacle Bank - 5	110115	Lunch Meeting	10-68-6210	37.69
11/13/2015	51160	1190	Pinnacle Bank - 5	110115	Breakfast for ER Water Repair Crew	10-68-6633	28.01
11/13/2015	51160	1190	Pinnacle Bank - 5	110115	Shelving for New PW Shop	10-68-6735	1,354.00
Total 51160:							1,419.70
11/13/2015	51161	1195	Pinnacle Bank - 6	110115-4027	Lunch Meetings	10-64-6212	68.02
Total 51161:							68.02
11/13/2015	51162	1266	Pinnacle Bank - 7	110115-3473	Police Equipment	10-66-7734	1,921.49
11/13/2015	51162	1266	Pinnacle Bank - 7	110115-3473	Car Printer	10-66-7732	449.41
11/13/2015	51162	1266	Pinnacle Bank - 7	110115-3473	Office Supplies	10-66-7736	126.07
11/13/2015	51162	1266	Pinnacle Bank - 7	110115-3473	Food for PW Crew	10-66-6415	38.18
11/13/2015	51162	1266	Pinnacle Bank - 7	110115-3473	Badges and Uniforms	10-66-6710	175.00
Total 51162:							2,710.15

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
11/13/2015	51163	509	Quill Corporation	9156336	Office Supplies	10-64-6720	155.98
11/13/2015	51163	509	Quill Corporation	9176452	Foam Board	10-64-6720	130.06
Total 51163:							286.04
11/13/2015	51164	1151	RH Water & Wastewater LLC	137	Wastewater Contract Ops	75-68-6633	125.00
11/13/2015	51164	1151	RH Water & Wastewater LLC	137	Water Contract Ops	70-68-6633	125.00
Total 51164:							250.00
11/13/2015	51165	1200	Roggen Telephone Cooperative C	0000000237	Internet Service	70-68-6633	58.80
11/13/2015	51165	1200	Roggen Telephone Cooperative C	0000000237	Internet Service	10-68-6633	245.96
Total 51165:							304.76
11/13/2015	51166	49	SAFEbuilt Inc	0022425-IN	Building Permits and Plan Review Services	10-65-6642	308.20
Total 51166:							308.20
11/13/2015	51167	1277	Sandra Torri Salazar	101215	Water Deposit Refund - 357 Beech Street	70-00-2030	31.20
Total 51167:							31.20
11/13/2015	51168	1212	Santander Leasing LLC	1735787	Street Sweeper Payment	10-68-7734	9,348.10
Total 51168:							9,348.10
11/13/2015	51169	285	Town of Hudson	110115-1006	Water & Sewer - 509 Cherry Street	10-68-6418	42.20
11/13/2015	51169	285	Town of Hudson	110115-2018	Water & Sewer - 557 Ash Street	10-64-6418	56.88
11/13/2015	51169	285	Town of Hudson	110115-3043	Water & Sewer - 258 5th Avenue	10-68-6418	56.11
11/13/2015	51169	285	Town of Hudson	110115-4061	Water & Sewer - 1175 6th Avenue	70-68-6418	5,780.26
11/13/2015	51169	285	Town of Hudson	110115-4062	Water & Sewer - 650 Cherry Street	10-69-6418	5,659.97
11/13/2015	51169	285	Town of Hudson	110115-4066	Water - Cememary	10-68-6418	15.16
11/13/2015	51169	285	Town of Hudson	110515	Winners - Halloween Decorating Contest	10-69-6730	60.00
Total 51169:							11,670.58
11/13/2015	51170	131	Tribune The	4352756	Publishing - Ordinance 15-12	10-64-6620	21.28
11/13/2015	51170	131	Tribune The	4352757	Notice of Public Hearings	10-64-6620	25.98
11/13/2015	51170	131	Tribune The	4352758	Bills Paid - August 2015	10-64-6620	116.16
11/13/2015	51170	131	Tribune The	4352759	Bills Paid - September 2015	10-64-6620	137.28
Total 51170:							300.70
11/13/2015	51171	1280	Triple R Excavation Co	856	Emergency Water Repair - 433 Beech Street	70-68-6633	907.50
Total 51171:							907.50
11/13/2015	51172	5	United Power	102915-1634	Electric - 8249 WCR 47.5	75-68-6413	3,595.10
11/13/2015	51172	5	United Power	102915-1800	Electric - Temp Const - 258 5th	10-68-6413	56.47
11/13/2015	51172	5	United Power	102915-1825	Electric - 258 5th	10-68-6413	95.27
11/13/2015	51172	5	United Power	110615-1553	Electric - 557 Ash Street	10-64-6413	104.82
11/13/2015	51172	5	United Power	110615-1553	Electric - 557 Ash Street	70-64-6413	104.82

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
Total 51172:							3,956.48
11/13/2015	51173	99	USA BlueBook	784090	Lab Supplies	75-68-6710	49.61
11/13/2015	51173	99	USA BlueBook	784090	Lab Supplies	70-68-6710	49.60
Total 51173:							99.21
11/13/2015	51174	18	Utility Notification Center of Color	21510423	Locates	70-68-6633	122.98
Total 51174:							122.98
11/13/2015	51175	293	Virulent Solutions Inc.	H151104RE	Remote Backup	10-64-6633	142.50
Total 51175:							142.50
11/13/2015	51176	1278	Wireless Advanced Communicatio	I-2209962	Equipment	10-66-7734	7,184.88
Total 51176:							7,184.88
Grand Totals:							87,873.92

Report Criteria:

Report type: GL detail

Check.Type = {<>} "Adjustment"

**LIQUOR OR 3.2 BEER LICENSE
 RENEWAL APPLICATION**

ROUGH RIDER SALOON
 P.O. BOX 817
 HUDSON CO 80642-0817

Fees Due	
Renewal Fee	\$500.00
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
Amount Due/Paid	500.00

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name END OF THE TRAIL LLC		DBA ROUGH RIDER SALOON		
Liquor License # 41885960000	License Type Tavern (city)	Sales Tax License # 41885960000	Expiration Date 12/14/2015	Due Date 10/30/2015
Street Address 653 CEDAR ST HUDSON CO 80642				Phone Number (303) 536 9880
Mailing Address P.O. BOX 817 HUDSON CO 80642-0817				
Operating Manager LISA Buesgens	Date of Birth 12-26-63	Home Address 20956 Weld County Rd 8 Hudson Co	80642	Phone Number 720-226-6444

- Do you have legal possession of the premises at the street address above? YES NO
 Is the premises owned or rented? Owned Rented* *If rented, expiration date of lease _____
- Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. YES NO
NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. YES NO
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. YES NO
- Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. YES NO
- SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.

AFFIRMATION & CONSENT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business Lisa Marie Buesgens	Title Owner
Signature Lisa Marie Buesgens	Date 10-30-15

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For	Date
Signature	Title
	Attest

INSPECTION REPORT

Case Number				Date of Report <i>11/10/2015</i>
Name <i>End of the trailer bar</i>				Time In/Out
Trade Name <i>End of the trail bar</i>				Manager <i>Lisa Buesgens</i>
Address <i>653 Cedar St</i>				License Type <i>Liquor or 3.2 beer</i>
City <i>Hudson</i>		State <i>CO</i>		Zip <i>80642</i>
				Telephone <i>303-536-9880</i>
Yes	No	N/A	Item	Comment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Valid State Liquor License Posted	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Valid State Sales Tax License Posted	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Valid Local License Posted	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Valid Federal Tax Stamp Posted	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Valid Food Service License Posted	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Minor Warning Sign Posted	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Meals or Snacks Available	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Cleanliness is Adequate	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Books and Invoices Available	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Beer Stock Acceptable	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wine Stock Acceptable	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Liquor Stock Acceptable	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Alcohol Purchased from Permitted Sources	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Compliance with Gambling Restrictions	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Manager Registered with Authorities	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Licensee in Possession/Control of Premises	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trade Name Properly Registered	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Compliance with Intoxicated Sale Restrictions	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Compliance with Sale to Minor Provisions	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Premise Physical Control Adequate	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Acceptable Dispensing Systems	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Off Premise Storage Licensed	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Only Permitted Items Sold	
Other Issues: <i>None</i>				
Warning Issued Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Warned About: <i>NA</i>				
Investigator Name/Number <i>Brent Flot H101</i> Person Advised: <i>NA</i>				

Liquor/Beer License Worksheet

The following concerns are noted: N/A

The Licensee and the Public Safety Officer have collectively agreed to implement the following to correct concerns noted above: (A time line and corrective action should be listed for each concern)

N/A

Lisa Marie Buesgens
Establishment Owner, Please Print

11/10/2015
Date

Lisa Marie Buesgens
Establishment Signature

[Signature]
Public Safety Officer's Signature

Use another sheet of paper or attach separate proposal to this packet if needed.

Attach copies of all reports associated with this establishment for the last year.

Both the Officer and the Owner of the establishment will be required to attend the Liquor Hearing to testify to the above agreement.

LIQUOR/BEER RENEWAL REVIEW FORM

Date:

To:

From:

Subject: Liquor License Check

In accordance with the new procedure for Liquor and/or beer license checks, please review all records on the following establishment for any associated reports during the last year and return your report to the Hudson Town Clerk to the Board's Office within two weeks. Your report will be used by the Town Board in considering renewal of the liquor and/or beer license.

PLEASE RESPOND NO LATER THAN:

ESTABLISHMENT:

End of the trail bar

Current license expires:

Dec 14, 2015



Bj No Concerns

Bj
Public Safety Officer's Initials

_____ The Public Safety Office had a concern and the Officer has mutually worked with the licensee to correct the concern. (Complete Attached Worksheet)

_____ Unresolved concerns exist requiring a Probable Cause Hearing scheduled by the Town Board. (Complete Attached Worksheet)



Please notify _____ at Extension _____ of the date and time of the Town Board's renewal hearing.

PUBLIC HEARING

Update to the Floodplain Overlay District in Section 16-146(c)(2) of the Hudson Land Development Code to be in compliance with the National Flood Insurance Program
November 4, 2015

CHAIR: I WOULD LIKE TO OPEN A PUBLIC HEARING FOR THE PURPOSE OF RECEIVING PUBLIC COMMENT ON THE AMENDING THE HUDSON MUNICIPAL CODE CONCERNING UPDATED FLOOD INSURANCE RATE MAPS. (STATE TIME)

WILL THE CLERK PLEASE STATE THE PURPOSE OF THE HEARING?

TOWN CLERK:

A PUBLIC HEARING FOR THE PURPOSE OF RECEIVING COMMENT ON THE Update to the Floodplain Overlay District in Section 16-146(c)(2) of the Hudson Land Development Code to be in compliance with the National Flood Insurance Program

CHAIR: WAS THE NOTICE OF THIS HEARING PUBLISHED IN THE LOCAL NEWSPAPER?

ADMINISTRATOR:

THE HEARING NOTICE WAS PUBLISHED IN THE GREELEY TRIBUNE ON OCTOBER 22, 2015.

CHAIR: (ADDRESSES THE AUDIENCE)

LET THE RECORD SHOW THAT THE REQUIRED PUBLIC NOTIFICATION FOR TONIGHT'S PUBLIC HEARING HAS BEEN MET AS STATED.

I WILL FIRST RECOGNIZE THE TOWN

ADMINISTRATOR TO GIVE A PRESENTATION AND RESPOND TO QUESTIONS OF THE TRUSTEES. I WILL THEN RECOGNIZE MEMBERS OF THE AUDIENCE WHO WISH TO SPEAK TO THE TRUSTEES REGARDING THE PROPOSED UPDATE TO THE HUDSON MUNICIPAL CODE CONCERNING THE UPDATED FLOOD INSURANCE RATE MAPS

DOES THE TOWN ADMINISTRATOR HAVE A PRESENTATION FOR THE BOARD?

(STAFF PRESENTATION)

CHAIR: IS THERE ANY MEMBER OF THE PUBLIC THAT WISHES TO ADDRESS THE BOARD OF TRUSTEES ON THIS MATTER? IF SO, PLEASE SIGN IN AND STATE YOUR NAME AND ADDRESS FOR THE RECORD.

CHAIR: THERE BEING NO FURTHER PRESENTATIONS, AT THIS TIME WE WILL CLOSE THE PUBLIC HEARING.

CHAIR: DO ANY OF THE TRUSTEES HAVE ANY REMAINING QUESTIONS OF STAFF ON THIS MATTER?

(WHEN IT APPEARS TO THE CHAIR THAT THE COMMISSIONERS HAVE NO FURTHER QUESTIONS)

NEXT AGENDA ITEM

MEMORANDUM

3.a.

To: Board of Trustees
From: Joe Racine, Town Administrator
Date: November 18, 2015
Subject: Ordinance No. 15-13, Second Reading, United Power franchise renewal

Attachment

Attached is Ordinance No. 15-13, presented for consideration on second reading. The ordinance renews the franchise for twenty years.

United Power, the Town's electric power provider, operates under the terms of the franchise agreement. The current franchise, codified in Chapter 5, Article 2 of the Municipal Code, expired on November 1st. As a section of the Municipal Code, the proposed franchise renewal is proposed for adoption by ordinance. It will then be inserted into the municipal code.

Franchises are agreements with the Town that detail the manner in which the service will be provided to the Town, and the use of Town streets for construction of facilities necessary to conduct the business. As with the current franchise, the franchise fee is 3% of revenue from sale of electricity. An additional 1.5% is set aside for the undergrounding fund, providing for construction of public electrical projects that are placed underground.

Significant changes from the current ordinance include the following:

- Cost control on work that is done for the Town by United Power.
- 20 year term. (The previous franchise agreement had been extended to 25 years.)

Because of advertising requirements, it is necessary to table Second Reading consideration of this ordinance until December 2nd, at which time a public hearing will be scheduled. That would be the appropriate time for discussion of the terms of the agreement with representatives from United Power.

ORDINANCE NO.

NO. 15-13
Series of 2015

TITLE: AN ORDINANCE APPROVING A FRANCHISE AGREEMENT WITH UNITED POWER, INC.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. Article 2 of Chapter 5 of the Hudson Municipal Code, granting a franchise to United Power, Inc., is repealed and reenacted to read as follows:

Sec. 5-50 Definitions.

(a) **Short Title.** This agreement shall be known as the Town of Hudson/United Power Electric Franchise Agreement (“Franchise Agreement” or “Agreement”).

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

“**Board of Trustees**” means the governing body of the Town of Hudson.

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

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

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

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

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

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

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

“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 owned or wholly funded by the Town; or (2) any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, in the County of Weld, and other entities established under Title 32 of the Colorado Revised Statutes.

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

“Renewable Resource” refers to any facility, technology, measure, plan or action utilizing a renewable “fuel” source such as wind, solar, biomass, geothermal, municipal, animal, waste-tire or other waste, or hydroelectric generation of twenty megawatts or less, including any eligible renewable energy resource as defined in § 40-2-124(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 Hudson.

“Revenues” means those amounts of money, which United Power bills for the sale of electricity under authorized rates to residents and any other sums that are generated by United Power from the use of its Facilities located within the Streets and Public Utilities easement. The word “revenue” does not include any other receipts including, but not limited to, receipts from the Town or any other person or entity, pole attachment revenue, disconnect/reconnect charges or late payment charge, but only receipts of money from the sale of electricity to Residents.

“Service Area” means the area within the Town of Hudson, which United Power is certified to serve by the CPUC.

“Streets and Public Places” 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.

“Tariff” or **“Tariffs”** shall mean the rules, regulations and rates which apply to United Power’s provision of electric service to its customers.

“Town” means the Town of Hudson located in Weld County, Colorado.

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

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

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

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

“**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.

Sec 5-51 Grant of Franchise

(a) 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, an exclusive right to furnish, sell and distribute electricity within the Town, to the Town and to all residents of the Town within United Power’s service area as specified by the CPUC. Subject to the conditions, terms and provisions contained in this Agreement, the Town also hereby grants to United Power an 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, and as may be necessary to carry out the terms of this Agreement, subject to the Town’s prior right of usage for and subject to the Town’s reasonable exercise of the police powers including, but not limited to, zoning, subdivision, permit and building code requirements. These rights shall extend to all areas of the Town within United Power’s service area as specified by the CPUC, as the Town is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise in said service area. The Town and United Power do not waive any of their rights under the statutes and Constitution of the State of Colorado and the United States, except as otherwise specifically set forth herein. The rights granted in this franchise will include the right to provide street lighting service and traffic signal lighting service to the Town, for which the Town will pay in accordance with its agreement with United Power or its established Tariffs. These rights shall extend to all areas of the Town within United Power’s 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.

(b) Effective Date and Term of Franchise. This Franchise shall be effective as of the effective date of the ordinance adopting the same and shall supersede any prior franchise grants to United Power by the Town, and shall supersede the previous provisions of Article 2, Chapter 5 of the Municipal Code of the Town of Hudson. The term of the Franchise shall be twenty (20) years unless extended by mutual agreement of the parties. This Franchise is not intended to revoke any prior license, grant, or right to use the Streets or other Town property and such licenses, grants or rights of use are hereby affirmed. Such rights shall hereafter be governed by the terms of this Franchise. Any events occurring prior to the effective date of this Agreement shall be construed under the agreement in place as of the date of any such event except that any provisions relating to under-grounding of distribution lines shall be construed under this Agreement. All under-grounding fund balances in existence and work-in-process on the date this Franchise Agreement becomes effective shall carry forward unaffected by this transition and as provided generally herein.

(c) Financial Responsibility.

(1) At the time of presentation of the letter accepting the terms of this Franchise, United Power shall submit to the Town certificates of insurance to demonstrate that United Power

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

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

(3) The Town agrees to list United Power as an additional listed insured on the Town's insurance policies, and to cover any claims by any person or entity for injuries (including death) to persons or damage to property, including theft, resulting in whole or in part from the acts or omissions of the Town, its trustees, employees, agents, contractors, and subcontractors, or in connection with or based upon a violation of applicable federal, state or local laws by the Town, and related to the facilities and operations described in this Franchise Agreement.

(d) Notice of Boundary Changes.

(1) United Power will provide the Town with a map defining the current United Power service area within the Town within thirty (30) days of the execution of this Agreement and will transmit the map as an attachment to a letter from United Power to the Town Administrator.

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

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

(e) Conditions, Limitations and Exclusions.

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

(2) Nothing contained in this Franchise shall be construed to authorize United Power to engage in any activities requiring a license or permission from the Town other than the provision of electric service without first obtaining such license 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 under-ground where United Power converts its shared above ground facilities to an under-ground facility.

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

(f) Police Powers.

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

A. 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.

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

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

(3) United Power shall 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. Compliance with the terms of this Franchise shall be deemed to constitute compliance with the Municipal Code of the Town of Hudson.

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

(h) Continuation of Utility Service. In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, United Power will not remove any United Power facilities pending resolution of the disposition of the system, or portions thereof, and shall continue to provide, and be paid for at current rates, electric service within the Town until the Town arranges for utility service from another provider. United Power further agrees that it will not withhold any continued interim electric services necessary to protect the public. The Town agrees that in the circumstances of this Section 5-51, United Power shall be entitled to monetary compensation as provided in United Power's Tariffs on file with the CPUC and United Power shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for the continued interim use of the Town Streets. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electric service for residents and upon order of the CPUC shall United Power be allowed to discontinue the provision of electric service to the Town and its residents. United Power will be compensated through the agreed upon final date of interim electric service provided by United Power.

Sec 5-52 Franchise Fee

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

Power by the Town for use of electricity by any of its departments shall be excluded from computation of the franchise fee.

(b) 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.

(c) Electric Service Provided to the Town. No franchise fee shall be charged to the Town for electric service provided to the Town for its own consumption, including Street Lighting Service and Traffic Signal Lighting Service.

(d) Franchise Fee Payment in Lieu of Certain Taxes and Other Fees. The Town accepts payment of the franchise fee by United Power in lieu of any occupation tax, occupancy tax, license tax, or similar tax or fee the Town might charge United Power or its subcontractors for the privilege of doing business in the Town, for the use or occupation of Town Streets, for the installation, operation and maintenance of United Power facilities, or for any other personal, real property, sales, use, or other tax or fee of any kind.

(e) 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.

(f) 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.

(g) Audit of Franchise Fee Payments.

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

(2) If the Town disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, and United Power shall cooperate fully, including but not necessarily limited to, providing the

Town's auditor with all information reasonably necessary to complete the audit. If the results of a Town audit conducted pursuant to Section 5-52(g) concludes that United Power has underpaid the Town by three percent (3%) or more, in addition to the obligation to pay such amounts to the Town, United Power shall also pay all costs of the audit. Errors arising solely from customer addresses inadvertently not identified as located within the municipal boundaries of the Town shall not be included in determining the error rate unless the Town has provided specific detailed written notice to United Power that such location address is within the municipal boundaries of the Town.

(3) Either party may challenge any written notification of error as provided for in this Section 5-52 of this Franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

(4) In addition to the three year audit provided above, the Town Administrator, 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 Administrator 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.

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

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

(j) 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.

(k) Payment of Taxes and Fees. United Power shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against 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.

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

Sec. 5-53 Administration of Franchise

(a) Supervision.

(1) **Town Designee.** The Town Administrator, 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 Administrator 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.

(2) 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.

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

A. To allow said official Town representative or his designee reasonable access to any part of United Power's plant that is directly used to serve the Town of Hudson, 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 within the municipal boundaries of the Town of Hudson. Access to United Power facilities described in this paragraph and 4.1(C)(2) shall be on an "appointment made" basis during normal business hours. The 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.

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

C. 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.

D. To meet as requested 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.

(b) Coordination of Work.

(1) 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.

(2) 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.

(c) **Examination of Records.** The Parties agree that any duly authorized representative of the Town and United Power shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this Franchise. All such records must be kept for a minimum of four (4) years. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books, documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials.

Sec. 5-54 Reports

(a) **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, provided that such information can be provided at a reasonable cost to the Town. Such form of reports may be changed from time to time as mutually agreed between the Town and United Power.

(b) **Annual Reports.** United Power shall provide the Town on or before May 1 of each year beginning, for the preceding calendar year, after the effective date of this franchise:

- (1) United Power's then modified debt service calculation;
- (2) A report of margins collected by United Power; and
- (3) 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.

(c) **Requested Reports.** Upon request by the Town, United Power shall provide the Town:

(1) 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; and

(2) A map (paper or electronic copy) indicating the major location of United Power facilities within and contiguous of the municipal boundaries of the Town of Hudson.

(3) A report regarding the reliability indexes of United Power's electric service.

(4) A list of all Town electrical accounts and account numbers and items metered.

(5) A list of street lights in the Town energized by United Power.

(d) 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. 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 not-for-profit electric cooperative formed primarily to distribute electrical energy, and its utility rates are not subject to regulation by the CPUC and are largely determined by the cost of acquiring electric power from its supplier(s).

Sec. 5-55 Supply, Construction And Design

(a) 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.

(b) Service Reliability.

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

(2) United Power shall be excused from the performance of its obligations hereunder, to the extent that performance of said obligations are delayed due to: failure of high voltage transmission facilities needed to serve the Town which are beyond United Power's responsibility and control; 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.

(c) 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 5-55, its customers as soon as practical in advance of the planned outage. United Power agrees that it will in good faith try to contact all customers at least forty-eight (48) hours prior to a planned outage.

(d) 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, under-grounding of overhead lines, construction and service quality. United Power agrees to fully participate in such public hearings as requested by the Town and to provide to the Town information available to United Power that relates to the hearings described in this paragraph.

(e) 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.

(f) Excavation, Construction, and Maintenance and Repair Work. 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 there from and restore such Town Streets or other Town Property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete site restoration for work done pursuant to this Section, United Power may with the approval of the Town, temporarily restore the affected Town Streets or other Town Property, provided that such temporary site restoration is at United Power's sole expense and provided further that United Power promptly undertakes and completes any necessary permanent site restoration when the weather or other conditions no longer prevent such permanent restoration. All site restoration work under this section 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 and left in equivalent or better conditions as found. 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 site 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 there from; provided however, Town actions do not unreasonably interfere with United Power facilities. United Power shall be responsible for the actual cost incurred by the Town to restore such Town Streets or other Town Property or to remove any obstructions there from. In the course of its site restoration of Town streets or other Town property under this Section, the Town shall not perform work on United Power facilities unless specifically authorized by United Power in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

(g) Outages and Restoration of Service.

(1) Customer Notification. Upon request, United Power shall provide annually to the Town Administrator 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. The notification shall be included in the Annual Report.

(2) 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 (24) hour basis concerning interruptions of electrical service in any part of the Town.

(3) 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.

(h) Installation and Maintenance of United Power Facilities.

(1) United Power Facilities. Except for emergencies, the construction, excavation, installation, maintenance, renovation, repair and replacement of any facilities by United Power within the municipal boundaries of the Town shall be subject to permitting, inspection and approval of locations 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 through the permit process. 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.

(2) **Town Projects.** Where United Power performs construction projects requested by the Town, United Power shall provide in advance a cost estimate for such work in sufficient detail to justify the estimated total cost. The Town shall deposit funds with United Power in the amount of the cost estimate prior to commencement of the work. Construction project change orders shall be limited to significant changes in project scope that are requested by and approved by the Town. United Power will promptly invoice any Town approved change orders to the Town and the Town will promptly pay the change order invoice. Upon completion of the agreed work, United Power will provide a final detailed report to the Town, reconciling the original projected cost estimates, including any approved change orders, to the actual costs incurred in completing the project. Upon reconciliation of the construction of the extension, the construction deposit shall be compared to the actual cost of the design and construction as entered in to the books of United Power. If the actual cost is less than originally estimated, United Power shall promptly refund the portion of the construction deposit greater than the actual costs, without interest, to the Town. United Power will exercise commercially reasonable means to keep the cost of projects performed for the Town to a minimum, and will bill the Town for such construction projects at costs that are reasonably comparable to using qualified personnel and industry standards for similar work. Where projects requested by the Town, that are located on a Town owned parcel, require removal of electrical facilities, United Power will not reasonably withhold approval of the Town to perform such work, so long as United Power has determined that said work can be accomplished in as safe manner as to not cause harm to any of its distribution system, or other electrical facilities.

(i) Obligations Regarding United Power Facilities

(1) **United Power Facilities.** All United Power facilities within Town Streets shall be maintained in good repair and condition.

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

- A. In a high-quality manner;
- B. In a timely and expeditious manner;
- C. 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.

(3) **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.

(4) **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 hold the necessary licenses and permits required by law.

(j) 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.

(3) **As-Built Drawings.** Upon reasonable written request of the Town designee, United Power shall provide within ninety (90) days of the request, as-built drawings of any United Power facility installed within the Town Streets or contiguous to the Town Streets. As used in this section, as-built drawings refers to the facility drawings as maintained in United Power's geographical information system or any equivalent system. United Power shall not be required to create drawings that do not exist at the time of the request.

(k) Relocation of United Power Facilities.

(1) **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. Upon request of the Town, United Power will exercise commercially reasonable means to relocate facilities in a shorter period of time for good cause shown by Town and United Power shall not unreasonably deny such relocation. Notwithstanding the foregoing, once United Power has relocated any United Power facility at the

Town's direction, if the Town requests that the same United Power Facility be relocated within two (2) years, the subsequent relocation shall not be at United Power's expense.

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

(3) Relocation Performance. The relocations set forth in Section 5-55(a) of this Franchise Agreement shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the Town designee requests in writing that the relocation commence, or the date when United Power is provided all service application submittal requirements. 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.

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

(5) 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 Section 5-55, subsections (f) and (g) of this Franchise or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

(6) 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, (ii) to United Power facilities located in Town property whose ownership or use was donated to the Town by United Power, and (iii) 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.

(7) Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless United Power is paid for the incremental amount by which the underground cost would exceed the above ground cost of

relocation, or the Town requests that such additional incremental cost be paid out of available funds under Section 5-57 of this Franchise.

(8) **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.\

(9) **Proposed Alternatives Or Modifications.** Upon receipt of written notice of a required relocation, United Power may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of United Power facilities. The Town shall in good faith review the proposed alternative or modification. The Town's acceptance of the proposed alternative or modification shall be at the sole discretion of the Town, provided however that such acceptance shall not be unreasonably withheld. In the event the Town designee accepts the proposed alternative or modification, 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.

(l) **Service to New Areas.** If, during the term of this Franchise, the municipal boundaries of the Town are expanded within United Power's service area, United Power shall extend service to residents of the newly incorporated areas, and United Power shall be paid therefor, in accordance with United Power's extension policy set forth in its Tariffs at the earliest practicable time. Service to annexed areas shall be in accordance with the terms of this Franchise Agreement, including payment of franchise fees as defined in Section 5-52 of this franchise.

(m) **New or Modified Service to Town Facilities.** In providing new or modified electric service to Town facilities, United Power agrees to perform as follows:

(1) **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 (180) days from the date upon which the Town designee makes a written request and provides all service application submittal requirements as described in this section. Upon request of the Town, United Power may complete electric service to Town facilities in less than one hundred eighty (180) days for good cause shown and United Power shall not unreasonably deny such expedited service. United Power shall be entitled to an extension of time to complete a project where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. 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.

(2) **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.

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

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

(1) **Performance.** United Power shall complete each requested modification within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes a written request and provides to United Power all information reasonably necessary to perform the modification. United Power shall be entitled to an extension of time to complete a modification where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. 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.

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

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

(o) Third Party Damage Recovery.

(1) **Damage to United Power Interests.** If any individual or entity damages any United Power facilities that United Power is responsible to repair or replace, to the extent permitted by law, the 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.

(2) **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.

(3) **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.

(p) **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.

Sec. 5-56 Compliance

(a) **Town Regulation.** The Town expressly reserves, and United Power expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such provisions, ordinances and rules and regulations ("New Provisions") as may be deemed necessary by the Town, in the exercise of its police power, to protect the health, safety and welfare of its citizens and their properties. However, adoption of such new provisions shall not be inconsistent with the provisions in this Agreement. Town shall give United Power 180 days written notice of any provisions, ordinances, rules or regulations which may affect United Power's rights, obligations, and performance hereunder, and shall not implement the same until United Power has the ability to meet and confer with the Town concerning such New Provisions. If the New Provisions alter the parties' rights, obligations or performance hereunder in any way, the parties shall meet and confer on either modifying this Agreement or terminating it.

(b) **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.

(c) **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.

Sec. 5-57 Underground Construction And Overhead Conversion

(a) New Lines Under-grounded. United Power shall place all newly constructed electrical distribution lines underground unless approved otherwise by the Town.

(b) Overhead Conversion of Electrical Lines. United Power agrees to allocate an annual amount, equivalent to one and one-half percent (1-1/2%) of the preceding calendar year's electric revenues derived from customers within the Town, for the purpose of under-grounding United Power's existing overhead electric distribution facilities within the Town, at the expense of United Power, as requested by the Town (the "Under-grounding Funds"). Any unexpended portion of the one and one-half percent (1-1/2%) revenues shall be carried over to succeeding years. Until three (3) years from the conclusion of this Agreement and upon request by the Town, United Power agrees to anticipate amounts to be available for up to three (3) years in advance to be used to underground its overhead distribution facilities, as requested by the Town. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated. Except as provided in Section 5-55(g) no relocation expenses which United Power would be required to expend pursuant to Section 5-55 of this Franchise Agreement shall be charged to this allocation. United Power shall not withhold approval of the plans of the Town except where essential for safety, or protection of the operating integrity of United Power's electric system. If, after any and all undergrounding of United Power lines has taken place and no more United Power overhead lines remain in the Town, there are any undergrounding funds remaining, or, if at any time the Town and United Power mutually agree in writing, undergrounding funds may be used by the Town for other mutually agreed electric utility related projects in the Town mutually agreed upon by the Town and United Power.

(c) Planning and Coordination of Under-grounding Projects. The Town and United Power shall mutually plan in advance the scheduling of under-grounding projects to be undertaken according to this Section as a part of the review and planning for other Town and United Power construction projects. In addition, the Town and United Power agree to meet, as required, to review the progress of then-current under-grounding projects and to review planned future under-grounding projects. The purpose of such meetings shall be to further cooperation between the Town and United Power to achieve the orderly under-grounding of United Power facilities. At such meetings, the parties shall review:

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

(2) Public projects anticipated by the Town; and

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

(d) Cooperation with Other Utilities. When undertaking a project of under-grounding, the Town and United Power shall work with other utilities or companies which have their lines overhead to attempt to have all lines under-grounded as part of the same project. When other utilities or companies such as cable television and telephone companies or other utilities with overhead facilities embark upon a program of underground construction where United Power has overhead facilities, United Power 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 under-grounding the facilities of other companies or the Town.

(e) Town Requirement to Underground. In addition to the provisions of this Section, the Town may require any above ground United Power Facilities to be moved underground at the Town's expense.

(1) **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 5-57.

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

(3) **Town Revision of All Service Application Submittal Requirements.** Any revision by the Town of all service application submittal requirements provided to United Power that causes United Power to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.

(4) **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 Section 5-55, subsections (f) and (g) of this franchise or as otherwise agreed with the Town designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

(5) **Estimates.** Promptly upon receipt of an undergrounding request from the Town and all service application submittal requirements necessary for United Power to design the undergrounding project, United Power 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 United Power estimate.

(6) **Report of Actual Costs.** Upon completion of each under-grounding 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.

(7) **Audit of Underground Projects.** The Town may require that United Power undertake an independent audit of any under-grounding project for five hundred thousand dollars (\$500,000.00) or greater. The cost of any such independent audit shall 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.

(f) Audit of Underground Fund. Upon written request of the Town, but no more frequently than once every three (3) years, United Power shall audit the fund for the Town. Such audits shall be limited to the previous three (3) 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 (50%) of the cost for the independent auditor's work and report.

Sec. 5-58 Environment And Conservation

(a) 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.

(b) Energy Conservation and Efficiency.

(1) Energy Efficiency Programs.

A. 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 United Power's website.

B. Town Improvements. United Power agrees to work with the Town to implement periodic grant or other financial assistance programs or mechanisms to assist the Town in defraying costs incurred by the Town in making technology changes and/or modifications to Town facilities or purchasing equipment to provide energy efficiencies and/or conservation. A mutually cooperative process including discussion during the June to August time frame for each ensuing budget year to include such expenditures in the next annual budget cycle will materially assist the parties in best utilizing such grant or other financial assistance programs. Both

parties must agree on the program uses, terms, conditions and funding mechanisms for all such grant or other financial assistance programs before United Power will advance any funds for such program.

C. 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.

- i. Notify the Town regarding eligible renewable resource programs;
- ii. Provide the Town with support regarding how the Town may participate in eligible renewable resource programs; and
- iii. Advise customers regarding participation in eligible renewable resource programs.

(2) Five Year Review. The Town and United Power agree to meet no less frequently than every five (5) years during the term of the Franchise to review and exchange information concerning new and additional energy conservation and efficiencies that may be implemented to further the stated intention of this Section 5-58.

Sec. 5-59 Use of United Power Facilities

(a) **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 (180) days' notice if it intends to abandon any shared facility, unless such change is occasioned by external circumstances beyond United Power's control. In that event, reasonable notice is all that is required.

(b) 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 distribution and transmission rights-of-way. Such grant shall be made only if United Power is given at least sixty (60) days advance notice of the Town's desired use. Any use by the Town pursuant to this Section 5-59 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. The Town shall hold harmless and indemnify United Power for any and all liability and damages associated with the Town's use of United Power's distribution and transmission rights-of-way, conduits and poles, including the payment of United Power's reasonable attorney and expert witness fees, if applicable, except if the loss is caused by United Power's own negligence.

(c) 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.

(d) 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.

Sec. 5-60 Right of First Purchase/Use of United Power Land

(a) 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 (60) days after receipt of the qualified appraisal in which to exercise the right of first purchase at the appraised value by giving written notice to United Power. If the Town is not satisfied with the appraisal tendered by United Power, the Town may obtain, within thirty (30) 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 (60) day time period by which the Town may have the first right to purchase the property shall be extended thirty (30) days from the dates of the second or third appraisal (as the case may be), and the Town shall close on the sale and pay the value set forth in the controlling appraisal within said thirty (30) days. Should the Town not provide the required written notice that it wishes to purchase the subject property within the time frames above, United Power may proceed to negotiate with others for the sale of such property, provided that United Power may not sell such property for an amount less than ninety-five percent (95%) of the appraised value without first providing the Town an opportunity to purchase such property at such lesser price, in which instance the Town shall have thirty (30) days to determine if it wishes to purchase such property.

Sec. 5-61 Indemnification of Town

(a) Town Held Harmless. United Power shall construct, maintain and operate its facilities in a manner which provides reasonable protection against injury or damage to persons or property. United Power shall not be obligated to hold harmless or indemnify the Town for claims, demands, judgments or losses which a court of competent jurisdiction has found to have arisen out of or in connection with any act of any nature, or failure to act of any nature, of the Town or its officers, contractors, agents or employees.

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

(c) Indemnification.

(1) **Town Indemnified.** 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.

(d) Immunity. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (§4-10-101, et seq., C.R.S.) or of any other defenses, immunities, or limitations of liability available to the Town by law.

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

Sec. 5-62 Transfer of Franchise

(a) Consent of Town Required.

(1) 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.

(2) In order that the Town may share in the value this Franchise adds to United Power's operations, any such transfer or assignment by United Power of rights under this franchise requiring Town approval under Section 5-62(a) shall require that the transferee promptly pay to the Town an amount that is equal to the lesser of (i) Three dollars (\$3.00) per metered account located within the municipal boundaries of the Town or (ii) three times the most recent twelve (12) months of franchise fees collected by the Town from United Power. In the event only a portion of United Power's service area within the municipal boundaries of the Town is transferred, the transfer fee shall be calculated by multiplying the greater of (i) and (ii) above by number of customers transferred, divided by the then current number of customers served by United Power in the Town before said transfer. Such transfer fee shall not be recovered from the Town or from the Town residents or property owners through electric rates of customers in the Town or by a surcharge of the Residents of the Town by the transferee or United Power.

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

Sec. 5-63 Municipally-Produced Utility Service

(a) Municipally-Produced Utility Service.

(1) **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, consistent with CPUC and established United Power Board requirements and considering the then existing agreements with United Power's current providers.

(2) **Franchise Not to Limit Town's Rights.** Subject to the provisions of Part 2 of Title 40, Article 9.5 of the Colorado Revised Statutes, nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

Sec. 5-64 Purchase Or Condemnation

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

(b) Notice of Intent to Purchase or Condemn. The Town shall provide United Power no less than one (1) year's prior written notice of its intent to purchase or condemn United Power facilities. Nothing in this section shall be deemed or construed to constitute consent by United Power to the Town's purchase or condemnation of United Power facilities.

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

(d) Continued Cooperation by United Power.

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

(2) 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.

Sec. 5-65 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.

Sec. 5-66 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.

Sec. 5-67 Breach and Remedies

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

(b) Breach/Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the “breaching party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach and except as provided under Section 5-66 . 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:

- (1) Specific performance of the applicable term or condition; and
- (2) 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.

(c) 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 5-66, the Town may provide written notice to United Power of such material breach. Upon receipt of such notice, United Power shall be given a reasonable time, not to exceed ninety (90) days, within which to remedy the material breach. If United Power does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this Franchise. This remedy shall be in addition to the Town’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, United Power shall continue to provide electric service to the Town and its residents until the Town makes alternative arrangements for such service and be paid for such service in 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.

(d) 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 5-62.

(e) 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.

Sec. 5-68 United Power Operations

(a) Corporate Structure. Unless otherwise required by law, United Power shall continue its operations hereunder as a Colorado nonprofit corporation and cooperative controlled by its customers and as generally provided under § 40-9.5-101, et seq., C.R.S. This subsection shall not

limit the power of United Power to engage in other lawful business ventures through the use of subsidiary or controlled entities, including for profit ventures.

Sec. 5-69 Amendments

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

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

(b) Proposed Amendments. At any time during the term of this Franchise, the Town or United Power may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired. However, nothing contained in this Section 5-69 shall be deemed to require either Party to consent to any amendment proposed by the other Party.

Sec.5-69 Equal Opportunity

(a) 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.

(b) 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.

(c) 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 Hudson business community. United Power believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. United Power is also committed to the principle that the success and economic well-being of United Power is closely tied to the economic strength and vitality of the diverse communities and people it serves. United Power believes that contributing to the development of a viable and sustainable economic base among all United Power customers is in the best interests of United Power and its member-owners and will keep these goals in mind in formulating its economic development strategies, programs and policies.

Sec. 5-70 Immigration

(a) **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.

(b) **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.

(c) **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.

(d) **Subcontractors.**

(1) 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.

(2) 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.

(3) 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:

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

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to Section 5-70, the subcontractor does not terminate the employment or contract with the illegal alien; except that United Power shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(e) **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:

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

(2) 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,

(3) 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.

(f) **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.

(g) **Violation.** If United Power violates a provision of this Section 5-70, such violation may constitute a breach of this Franchise Agreement and the Town, in its sole discretion, may terminate the Franchise for breach of contract. If the Franchise is so terminated, United Power shall be liable for actual damages to the Town.

Sec 5-71 Miscellaneous

(a) **No Waiver.** Neither the Town nor United Power shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions. Further, neither the Town nor United Power waives any rights under the laws, statutes and/or constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.

(b) **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 5-61.

(c) **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 Hudson:

Town Administrator
Hudson Town Hall
557 Ash Street, P.O. Box 351
Hudson, CO 80642-0351

With a faxed copy to: (303) 536-4753

For United Power:

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

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

(d) **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.

(e) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Agreement.

(f) **Third Parties, Rights to Third Parties.** Nothing herein contained shall be construed to provide rights or benefits to third parties.

(g) **Prevailing Party.** In any judicial or administrative action to enforce any of the terms or conditions of this franchise, the party that substantially prevails as determined by the court shall be entitled to recover its costs and expenses incurred in such action, including reasonable attorney fees.

(h) **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.

(i) **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.

(j) **Authority.** Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable laws, to legally authorize the undersigned signatories to execute this

Agreement on behalf of the parties to its terms. The persons executing this Agreement on behalf of each of the parties warrant that they have full authorization to execute this Agreement.

(k) Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Weld County, State of Colorado.

Sec 5-72 Approval

(a) Town Approval. This grant of Franchise shall not become effective unless approved and granted by ordinance of the Town Council.

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

Section 2. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ IN FULL, AND ADOPTED this 21st day of October, 2015.

IN WITNESS WHEREOF, the parties have executed this agreement this ____ day of _____, 2015.

UNITED POWER, INC.,
a Colorado nonprofit corporation

By: _____
United Power CEO

TOWN OF HUDSON, COLORADO

Raymond Patch, Mayor

ATTEST:

Linnette Barker, CMC, Town Clerk

PASSED ON SECOND AND FINAL READING this _____ day of _____,
2015, AND ORDERED PUBLISHED ONCE IN FULL.

TOWN OF HUDSON, COLORADO

Raymond Patch, Mayor

ATTEST:

Linnette Barker, CMC, Town Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, Town Attorney

MEMORANDUM

To: Board of Trustees
From: Joe Racine, Town Administrator
Date: November 18, 2015
Subject: PUBLIC HEARING: Ordinance No. 15-14, Second Reading, Update to the Floodplain Overlay District

2.a.
3.b.

Attachments

Attached is Ordinance No. 15-14, an amendment to the Town's floodplain regulations that changes the reference to the local FEMA flood insurance rate maps. Section 16-146(c)(2) of the Municipal Code refers to specific floodplain maps published by the Federal Emergency Management Agency (FEMA) in 1982. New editions of the maps will take effect on January 20, 2016. In order for the Town to remain eligible for federal flood insurance, we have been advised by FEMA of the need to update our code to refer to the new maps.

The attached redlined Ordinance No. 15-14 amends the code to refer to the three new map panels that are of concern to Hudson. The boundaries of the floodplain within Hudson have changed somewhat, but are still along Jim Creek and Boxelder Creek.

Also attached is a memo from Town Planner Roy Fronczyk, reporting on the action of the Planning Commission regarding this ordinance.

MEMORANDUM

TO: Board of Trustees
FROM: Roy Fronczyk
DATE: November 11, 2015
SUBJECT: Planning Commission Public Hearing, November 11, 2015,
Floodplain Ordinance Update,

The required public hearing to update to the Floodplain Overlay District in Section 16-146(c)(2) of the Hudson Land Development Code to incorporate revised floodplain map updates was conducted by the Planning Commission on Wednesday, November 11, 2015. All required public notification requirements for the update to the ordinance were completed.

Staff presented their findings which are attached to this memo.

There were no public comments pertaining to the update.

Staff recommended approval of the update and the Planning Commission voted unanimously to recommend approval to the Board of Trustees.

ORDINANCE NO.

NO. 15-14
Series of 2015

**TITLE: AN ORDINANCE AMENDING THE HUDSON MUNICIPAL CODE
CONCERNING UPDATED FLOOD INSURANCE RATE MAPS**

WHEREAS, Section 16-146 of the Hudson Municipal Code (the "Code") governs floodplains; and

WHEREAS, the Federal Emergency Management Agency ("FEMA") has published updated Flood Insurance Rate Maps ("FIRMs"); and

WHEREAS, Section 16-146 (c)(2) makes reference to the earlier version of the FIRMs.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 16-146 (c)(2) of the Code is hereby amended to read as follows:

Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by FEMA, as shown on those portions of Flood Insurance Rate Maps (FIRM) Number 08123C2135E, Number 08123C2155E, and Number 08123C2165E, Weld County, Colorado, effective January 20, 2016, that are currently within the corporate limits of the town, and any revisions thereto, are hereby adopted by reference and declared to be a part of this section.

INTRODUCED, READ IN FULL, AND ADOPTED this 4th day of November, 2015.

TOWN OF HUDSON, COLORADO

Raymond Patch, Mayor

ATTEST:

Linnette Barker, CMC, Town Clerk

PASSED ON SECOND AND FINAL READING this 18th day of November, 2015,
AND ORDERED PUBLISHED ONCE IN FULL.

TOWN OF HUDSON, COLORADO

Raymond Patch, Mayor

ATTEST:

Linnette Barker, CMC, Town Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, Town Attorney

MEMORANDUM

3.c.

To: Board of Trustees
From: Joe Racine, Town Administrator
Date: November 18, 2015
Subject: Job Description – Deputy Marshal

Attachment

The proposed 2016 budget includes the new position of Deputy Marshal. This position will be a second sworn law enforcement officer who will report to the Marshal. We are bringing this job description to the Board at this time in order to enable us to begin advertising the position. It will be important to have this position filled as soon as possible after the Marshal is sworn in after January 1st.

The proposed job description is attached. Public Safety Manager Brent Flot will be on hand to answer questions at the meeting.

JOB DESCRIPTION – TOWN OF HUDSON DEPUTY MARSHAL

DESCRIPTION OF WORK

SUMMARY OF POSITION:

This is a regular full-time exempt position with full benefits as may be offered by the Town. A Deputy Marshal shall have all police powers authorized by Local, State, and Federal Law. A Deputy Marshal performs a wide variety of duties in a highly visible public contact setting. Deputy Marshals shall have comprehensive knowledge of modern law enforcement principles, knowledge in law enforcement methods and procedures, and knowledge in Federal, State, and Local laws and ordinances. Deputy Marshals will handle animal calls for service and town code violations. This position requires excellent communication skills, both oral and written, with the ability to positively represent the Town of Hudson when interacting with citizens, law enforcement, local businesses, and community groups.

IMMEDIATE SUPERVISOR:

The Deputy Marshal shall report directly to the Marshal.

MANDATORY QUALIFICATIONS:

- Must have a valid Driver's License
- Must have a Colorado Peace officer Certification
- Must be able to obtain current firearms qualification
- Must be able to obtain current CPR qualification
- Must have the ability to perform animal control and code enforcement functions
- Must be able to handle complex decisions appropriately
- Must have outstanding public relations skills
- Must be able to perform tasks in all weather conditions
- Must be able to withhold confidential information from the public
- Must not of consumed any illegal substances listed under sections 18-18-203 – 18-18-207 within the last year
- Must not of consumed marijuana, or marijuana concentrates within the last six (6) months
- Must have flexibility with the work hours needed for the safety of the town

KNOWLEDGE, SKILLS AND ABILITIES:

- Understand and apply the basic municipal ordinance contents and the ability to learn, understand and apply the Hudson Municipal Code
- Ability to work with a wide variety of people including other law enforcement entities
- Develop and maintain respectful relationships with citizens
- Provide fair and consistent interpretations and enforcement
- Exhibit flexibility where possible without compromising public safety
- Maintain composure while taking command and restoring control in volatile situations

- Foster mutually supportive relationships with all partner entities
- Ability to remain calm and professional in tense situations
- Ability to communicate effectively both verbally and in writing
- Ability to prepare reports in a clear, concise and organized manner
- Ability to make reasonable judgements and work under limited supervision
- Ability to adapt to changes in work environment, manage demand for service, changes approach or method to best fit situation
- Ability to operate a town vehicle in adverse weather conditions
- Ability to work call-back or standby
- Ability to troubleshoot problems in the field and over the phone; investigate, review and analyze criminal statistical data, develop effective measures to ensure effectiveness and efficiency with the office and complete crime reports as required

PHYSICAL DEMANDS:

Must be able to perform tasks commonly associated with law enforcement, animal control, and code enforcement activities.

ESSENTIAL FUNCTIONS

- Foster a close and cooperative working relationship with the Hudson Fire Protection District, RE3J School District, and other governmental agencies
- Participate, implements, and develops programs in crime prevention and public education programs to enhance law enforcement and community relations
- Able to establish and maintain effective working relationships with other Town officials, employees, county, state and federal authorities, civic leaders and the public
- Patrol town streets responding to citizen complaints or observed violation and determines appropriate actions
- Mediate neighborhood complaints; determine if a violation has occurred; gathers evidence and completes the complaint with a warning or summons as appropriate
- Conduct follow up to cases, writes formal reports, and testify in court
- Capture, secure, and transport animals to a secure facility
- Troubleshoot animal behavior problems in the field; investigates and quarantines domestic animal bites; promotes responsible pet ownership
- Ensure that Office equipment is well maintained and accounted for
- Enforce municipal codes related to property maintenance
- Enforce traffic laws including parking violations

Critical features of this job have been listed in the job description. They may be subject to change at any time due to reasonable accommodation or other reasons. Other duties and responsibilities may be assigned by the marshal at any time.

MEMORANDUM

3.d.

To: Board of Trustees
From: Joe Racine, Town Administrator
Date: November 18, 2015
Subject: Bid award, street repairs

During the cleanup of the BNSF derailment last spring the railroad's crews and contractors used town streets on both sides of the tracks for access to the accident site. Cleanup included removal of train car wrecks and coal, and access by heavy equipment. Town streets sustained some damage during this process, mainly on 5th Avenue and on Hudson Drive near the recycling station. We solicited a cost estimate from A-1 Chip Seal and filed a claim with BNSF for damages, based on that estimate, in the amount of \$44,431.22. BNSF has paid the claim. The cost of associated staff time was not included in the claim.

The repair project includes a mill/overlay of 2,400 square yards of Hudson Drive and patching of 74 square yards of pavement on 5th Avenue.

Given the size of the project, staff solicited two additional bids for the work. The meeting tonight will be an opportunity for the Board to award the bid.

At the time of this memo we have just two of the three anticipated bids, and the two we have need to be reconciled to cover comparable project specifications. Staff will have three comparable bids in time for the meeting. The two bids we have at this time, understanding that we have to revise quantities, are:

- A-1 Chip Seal: \$44,431.22 \$68.53/SY Patching, \$16.40/SY mill/overlay
- Asphalt Specialties: \$31,920.00 \$175.00/SY Patching, \$20/SY mill/overlay

Any cost savings through the bidding process is proposed to be used to purchase crack sealing material that can be used on other streets along the route of BNSF and elsewhere in the Town.



www.a-1chipseal.com

www.rockymountainpavement.com

Customer	Attention	Date
Town of Hudson	Ron Allen	06/25/15
PO Box 351	(303) 536-9311	Proposal #
Hudson, CO 80642-	rallen@hudsoncolorado.org	19614
Proposal for	Fax: (303) 536-4753	
Town of Hudson - 7638 County Road 49 - Hudson		

Item#	Description	Qty/Unit	Unit Price	Total Price
	Option# 1 Railroad Work			
01	Asphalt Patching Sawcut, Excavate to a depth of 6" in failed areas, Dispose, Compact, Prep subgrade, apply tack coat, and replace with 6" of compacted full depth asphalt.	74 SY		\$5,071.22
02	Asphalt Overlay Clean the existing surface, apply tack coat, and Overlay with an average of 2" compacted full depth asphalt. *Includes full width milling at 2" depth *Based on quantity given of 2,400 sq. yds. *Based on being able to close the road down during repair	2,400 SY		\$39,360.00
Accepted _____ Total for Option# 1				\$44,431.22

Additional Charges If Required :

- *This Proposal is based on one Mobilization.
- *Additional mobilizations add \$1400.00 for mill and \$1200.00 for paving crew
- *If existing asphalt is thicker than proposed depth additional cost will apply price per SY inch.

Notes:

- *Any soft or unstable areas will be corrected on an hourly basis at the direction of the Owner Representative.
- *We cannot guarantee positive drainage on existing or proposed areas less than two percent (2%) fall/slope, consequently no warranty will be provided if these conditions exist.
- *This work can be scheduled only after receipt of signed contract.
- *Pricing for this quotation is applicable for 30 days from date of quote.
- *Final billing will be based on actual field measured quantities installed.
- *Due to current unstable oil markets the price of asphalt may change at time of paving.
- *Any changes will be documented by AC supplier and a direct price increase will apply.
- *Rocky Mountain Pavement must truck over existing asphalt to complete our work and shall not be held liable or responsible for damage to existing lot due to necessary trucking.

**All Asphalt Patching, Concrete, and Subgrade Prep/Scarify work WILL require Utility Locating. Locates can take anywhere from 1-3 days to be completed per Colorado 811 guidelines.

Exclusions:

- *All polymer-modified asphalt.
- *Bonds (add 1%), permits, lab and field testing, engineering, fees, surveying, striping, traffic control, and utility adjustments.

See attached terms and conditions

Accepted by: _____ Date: _____ Estimator: Trey Olson

Trey Olson
(303) 472-7352
treyo@asphaltrepair.com

Accepted by: _____ Date: _____
Authorized Agent(s)

Phone: 303.650.9653 Fax: 303.650.9669

2001 West 64th Lane - Denver, CO 80221

A-1 Chipseal Co. & Rocky Mountain Pavement, LLC is an Equal Employment Opportunity Employer.

Terms and Conditions

1. This contract (hereinafter referred to as the "Agreement") including the terms and conditions that follow, supersedes any prior understanding or written or oral agreement between the parties, and constitutes the entire agreement between the parties and any understanding or representation not contained herein is hereby expressly waived. It is expressly understood that no representative of the contractor has the power to modify the provisions hereof in any respect, that Contractor shall not be bound by, or liable to, Owner for any representation, promise or endorsement made by any agent or person in Contractor's employment to set forth in this Agreement, and no modification or amendment of this instrument shall be binding on the Contractor unless set forth in writing and signed by an authorized officer of the Contractor.
2. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives successors, and assigns, where permitted by this Agreement. Owner expressly agrees that this Agreement is binding upon it and is not subject to cancellation unless expressly agreed upon for any reason, as shown in the body of this Agreement, and that furthermore, notwithstanding the terms hereof, this Agreement shall not be binding upon Contractor until the credit of Owner is approved and accepted by Contractor.
3. Contractor shall not be liable for delays or damages occasioned by causes beyond his control, including but not limited to: the elements, labor strikes and other labor unrest, riots and other public disturbances, acts of God, accidents, material and supply shortages, and delays occasioned by suppliers not meeting shipping schedules.
4. If any provision is modified by statute or declared invalid, the remaining provisions shall nevertheless continue in full force and effect. The Owner and the Contractor agree that the Agreement shall be construed and governed by the laws of Colorado and that venue for any dispute or litigation arising out of this Agreement shall be in Adams County, Colorado.
5. Any alteration or deviation from the specifications, including those directed by the Owner, construction lender and any public body, that involves extra cost (subcontract, labor, materials) will be executed only upon the parties entering into a written change order, which Contractor may or may not execute at its discretion. Owner hereby authorizes Contractor to make any such repairs and agrees to be responsible for the cost of any such repairs and agrees to be responsible for the cost of any such additional work and materials necessary to complete the Job as described herein.
6. Contractor will provide and pay for all labor and materials necessary to complete the Project. Contractor is released from this obligation for expenses incurred when the Owner is in arrears in making progress payments.
7. Contractor will maintain worker's disability compensation insurance for his employees and comprehensive coverage liability insurance policies. Owner to carry insurance against fire, tornado, hail, vandalism and other casualty losses.
8. Contractor may substitute materials without notice to the owner in order to allow work to proceed, provided that the substituted materials are of no lesser quality than those listed in the specifications.
9. Contractor shall not be responsible for underlying materials of the pavement.
10. The parties agree that in the event of breach of any warranty, either expressed or implied, the liability of the Contractor shall be limited to the labor costs of replacing the defective work. The Contractor shall not be liable for any other damages either direct or consequential. Notwithstanding anything else to the contrary, the Contractor shall have no liability or responsibility for any damage to the structure, its contents, floors, carpets and walkways that is caused by the condition of tracking materials (sealcoat, crack filler, tar, etc.), caused by others besides employees, regardless of whether such damage occurs or is worsened during the performance of the job.
11. Any warranty, express or implied, is void if contract is not paid in full.
12. If any payment under this Agreement is not made when due, the Contractor may suspend work on the job until such time as all payments due have been made. Any failure to make payment is subject to a claim enforced against the property in accordance with applicable lien laws.
13. In the event the amount of Contract is not paid within 30 days from completion, the account shall be in default. The acceptor of this Agreement agrees to indemnify and hold harmless the Contractor from any costs of expenses incurred in the collection of the defaulted account, or in any part thereof, including attorney's fees, court cost, etc., and further agrees that the defaulted account, or in part thereof, including attorney's fees, court cost, etc., and further agrees that the defaulted account will bear interest at the rate of 1-1/2% per month, not to exceed 18% per year and not to exceed the maximum rate permitted by law, on the unpaid balance.
14. Owner agrees to indemnify and hold harmless the Contractor and its agents, managers, directors, officers and employees from and against claims, damages, losses and expenses arising out of or resulting from the performance of this Agreement, including claims relating to damages caused by other tradesman and claims related to environmental laws and hazardous materials, except to the extent that such damage, loss or expense is due to the gross negligence or willful misconduct of the party seeking indemnity.
15. This contract shall become binding when signed by all parties and the authorized office of the Contractor. Owner agrees that upon cancellation before work is started, or before material is delivered on the job, to be liable for 15% of gross amount of contract for restocking fees. Owner is liable for the full amount of contract in the event they cancel contract after work has started.
16. If contract is completed except for the installation of the striping, then the Owner shall only have the right to hold 10% of the Contract price until that part of the work is completed.
17. Any notice required or permitted under this Agreement may be given certified or registered mail at the addresses contained in the Agreement.
18. Owner further agrees that the equity in this property is security in this Contract. This Contract shall become binding only upon written acceptance hereof by the Contractor or by an authorized Agent of the contractor, or upon commencement of the work.
19. This Contract constitutes the entire understanding of the parties, and no other understanding, collateral or otherwise, shall be binding unless in writing signed by both parties.
20. The proposal will expire within 90 days from date unless extended in writing by the company. After 90 days, we reserve the right to revise our price in accordance with costs in effect at that time.

MEMORANDUM

3.e.

To: Board of Trustees
From: Joe Racine, Town Administrator
Date: November 18, 2015
Subject: Report: Kerr McGee Oil & Gas Onshore, LP, Use by Special Review

Attachments

On October 21st the Board granted two use by special review permits to Kerr McGee for two well pads on the Shaklee property. Conditions on those approvals are explained in the attached letter to Kerr McGee that was sent following the meeting. The Board specified that by this meeting on November 18th we would either have a Memorandum of Understanding (MOU) with Kerr McGee addressing use of Town streets and traffic congestion resulting from these wells and a set of well pads north of the prison and outside of the Town known as the "Powers" wells. Absent an acceptable MOU the Board was prepared to impose additional specific conditions on the two USRs.

In partial fulfillment of one of the conditions, Kerr McGee is working with their consultant, Felsburg, Holt and Ulevig, to revise and complete a traffic management plan. Secondly, on November 12th they submitted a DRAFT MOU and an accompanying "Contribution Agreement" for our consideration.

There has not been sufficient time to study the proposed agreements. However, I suggest that the drafts represent a good faith effort on the part of Kerr McGee to satisfy the Board's conditions and that the drafts satisfy the spirit of the Board's conditions. We will try to have agreements on the December 2nd agenda for consideration by the Board.



TOWN OF HUDSON

557 ASH STREET, P.O. BOX 351, HUDSON, CO 80642-0351
Phone: (303) 536-9311 FAX: (303) 536-4753
www.hudsoncolorado.org

October 22, 2015

Patty Varra
Municipal Planning Analyst
Kerr McGee Oil & Gas Onshore LP
1099 18th Street
Denver, CO 80211

Re: Case No. 15-09 USR, CC Open A1, West Pad
Case No. 15-10 USR, CC Open A2, East Pad

Dear Patty,

This is to confirm the action of the Hudson Board of Trustees at its meeting of October 21, 2015 regarding the above-referenced Use by Special Review applications by Kerr McGee Oil & Gas Onshore LP. After public hearing, and in consideration of the recommendations of the Planning Commission and the request for modification of conditions submitted by you, the Board approved the USR permits with the following conditions:

- (1) Should the site plan change from that one which is approved, then a new application for the USR would need to be submitted to the Town.
- (2) Prior to the Town issuing a Notice to Proceed the town would need copies of the COGCC permit and a executed permit for the use of overweight construction vehicles on town streets.
- (3) On October 12, 2015 Kerr-McGee received the result of the traffic study performed by Felsburg, Holt and Ulevig that undertook a Traffic Analysis of Well Site Pads Accessed from SH 52 in Hudson, Colorado. Taking into account the findings of the referenced study, Kerr-McGee agrees to work in good faith to negotiate a Memorandum of Understanding to address any potential adverse impacts, if any, to the Town that may be created as a result of Kerr-McGee's use of the roads and impact on traffic caused directly by its operations in drilling, completing and producing the CC Open A 1 West Pad and CC Open A 2 East Pads. The parties acknowledge neither the findings of the study nor the inability to reach an executed Memorandum of Understanding will prevent Kerr-McGee from drilling and developing the CC Open A 1 West Pad and CC Open A 2 East Pad in a timely fashion. However, the Town reserves its rights under its code to impose reasonable conditions of approval on this USR if a memorandum of understanding cannot be reached.
- (4) The Town and the applicant will work together to bring to the Board of Trustees on or before November 18, 2015, a Memorandum of Understanding regarding responsibilities and commitments by the parties to mitigate anticipated impacts on Town streets and traffic congestion generated by or exacerbated by the applicant's current and anticipated

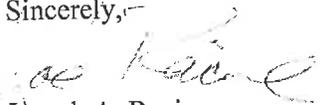
Patty Varra
September 23, 2015
Page 2

construction, completion and operation of oil and gas facilities that will be accessed via Town streets and other roads within Hudson, regardless of the location of such facilities within or outside of the Town boundaries. In the event that the parties are unable to agree on the terms of a Memorandum of Understanding, the Board of Trustees may impose such conditions as it deems reasonable on the Use by Special Review permits for the applicant's proposed oil and gas facilities within the Town.

Preliminary review of the Felsburg, Holt and Ulevig traffic study that was received yesterday afternoon reveals that there are specific deficiencies in the analysis and conclusions. Please be aware that the study does not meet the expectations for the traffic management plan that was discussed in June. We will be glad to meet or to discuss over the phone the nature of those deficiencies.

We will be glad to arrange a time to meet to discuss terms of an MOU to meet the agreed-upon conditions of the USRs.

Sincerely,



Joseph A. Racine
Town Administrator

cc: Board of Trustees
Corey Hoffmann, Town Attorney
Roy Fronczyk, Town Planner
Linnette Barker, Town Clerk

MEMORANDUM

3.f.

To: Board of Trustees
From: Joe Racine, Town Administrator
Date: November 18, 2015
Subject: Resolution No. 15-29, Canceling December 16 Board meeting

Attachments

In the past the Board occasionally has cancelled the meeting before Christmas. This agenda item is for the Board to consider whether or not to cancel the December 16, 2015 regular meeting. There is no pressing business anticipated at this time that needs to be addressed on December 16th.

Resolution No. 15-29 would cancel the meeting.

RESOLUTION NO.

15-29

**TITLE: A RESOLUTION CANCELING THE REGULAR BOARD
OF TRUSTEES MEETING FOR DECEMBER 16, 2015**

BE IT RESOLVED by the Board of Trustees of the Town of Hudson, Colorado as follows:

Section 1. The regular meeting of the Board of Trustees of the Town of Hudson, scheduled for December 16, 2015, is hereby canceled. The Treasurer is directed to pay those bills due and outstanding and subject to approval on December 16, 2015.

INTRODUCED, READ AND ADOPTED THIS 18th day of November 2015.

TOWN OF HUDSON, COLORADO

Raymond Patch, Mayor

SEAL

ATTEST

Linnette Barker, Town Clerk

MEMORANDUM

3.g.

To: Board of Trustees
From: Joe Racine, Town Administrator
Date: November 18, 2015
Subject: Resolution No. 15-28, Employee merit bonus formula

Attachment

At the August Board retreat, the Board discussed the manner in which bonuses would be distributed each year, provided that the Board decides to provide such bonuses. The attached Resolution No. 15-28 sets a policy that would provide consistency in the manner in which discretionary bonuses would be distributed, and would have the additional effect of notifying employees in advance of the policy, precluding unwarranted expectations.

At the last meeting the Board tabled this matter, directing staff to revise the resolution to provide for a pro rata bonus to employees, based on the percentage of the last 12 months worked, regardless of whether or not they have completed probation. The attached resolution incorporates that change.

RESOLUTION NO.

15-28

TITLE: A RESOLUTION SETTING PROCEDURES FOR THE CHRISTMAS BONUS COMPENSATION FOR EMPLOYEES OF THE TOWN OF HUDSON

WHEREAS, the Town periodically gives Town Employees a Christmas Bonus; and

WHEREAS, the Christmas Bonus compensation is contingent on the adopted annual Budget; and

WHEREAS, the Board of Trustees wishes to adopt a policy to clarify the procedure for the Christmas Bonus compensation for employees.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

Section 1. The Board of Trustees hereby adopts the following policy for the Christmas Bonus compensation:

A. Full-time regular employees will receive a pro-rated Christmas Bonus amount based on the percentage of hours worked during the twelve calendar months prior to the date this resolution compared to that of a full-time employee.

B. Part-time regular employees will receive a pro-rated Christmas Bonus amount based on the percentage of hours worked during the twelve calendar months prior to the date of this resolution compared to that of a full-time employee.

C. Temporary or Seasonal employees will not be eligible for a Christmas Bonus.

INTRODUCED, READ and PASSED this 18th day of November, 2015.

TOWN OF HUDSON, COLORADO

Raymond Patch, Mayor

ATTEST:

Linnette Barker, Town Clerk