

ORDINANCE NO. _____

1 WHEREAS, under the City Charter and authority under the laws of the State of Nebraska
2 (See: Neb. Rev. Stat. § 15-222, See Also: Neb. Rev.Stat. § 19-4603, Repealed, Laws 2003, LB
3 790, effective May 31, 2003), the City of Lincoln is authorized to negotiate with and enter into
4 franchise agreements with private utility companies to, among other things, locate improvements
5 in the public rights-of-way for purposes of providing utility services including natural gas
6 services to citizens of the City; and

7 WHEREAS, Aquila is formerly known as Utilicorp United, Inc., and formerly conducted
8 business as “Peoples Natural Gas Division” a/k/a “Peoples Natural Gas Company;” and

9 WHEREAS, Aquila completed its corporate name change in approximately February of
10 2002 and references to Aquila herein shall include Peoples as a predecessor in interest where
11 applicable; and

12 WHEREAS, Aquila is currently operating under a Franchise and providing natural gas
13 services to citizens of Lincoln and has provided gas service thereunder since December 22, 1994,
14 doing so prior to approximately February 2002 under the name of Peoples and other trade names
15 or d/b/a names such as “Energy One” and “Aquila Networks – PNG;” and

16 WHEREAS, Aquila provides gas service under the Franchise and Rates for three classes
17 of customers:

- 18 a. Residential, including all non-interruptible purchasers located within the City’s
- 19 corporate limits with requirements of less than one hundred thousand cubic feet of natural gas
- 20 per day (Residential);

1 b. Commercial, including all purchasers located within the City’s corporate limits with
2 requirements of one hundred thousand cubic feet or more of natural gas per day (Commercial);
3 and

4 c. Transport, including Commercial purchasers from competitive suppliers using
5 Aquila’s infrastructure for distribution only (Transport); and

6 WHEREAS, Aquila is prohibited under Section 3 of the franchise from granting any
7 preference or advantage to any person or entity located within the City’s corporate limits that
8 purchases or requests gas service from Aquila; and

9 WHEREAS, Aquila is required under Section 3 of the Franchise to at all times supply gas
10 service in accordance with the Franchise, including the use of reasonable operating practices to
11 furnish safe, adequate, efficient, reliable and low-cost gas service to any person or entity located
12 within the City’s corporate limits that purchases or requests gas service from Aquila.

13 WHEREAS, since approximately 1997 up to and including the present time, Aquila,
14 provides gas service to Residential customers using a “portfolio” approach separating supplied
15 gas into three categories:

- 16 a. Spot market – gas purchases made for immediate delivery;
- 17 b. Fixed Contract – gas purchases made at a stated price for delivery in the future;
- 18 c. Storage Gas – gas added to supply from previous purchases either Spot or Fixed
19 Contract gas to which is added the cost of storage; and

20 WHEREAS, Aquila should continue to use reasonable company operating practices
21 including adequate internal controls and independent audits where necessary to restrict any
22 ability to assign gas purchases between customer classes or gas supply portfolio categories after
23 the fact or when risk and revenue factors are predetermined.

1 NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lincoln,
2 Nebraska:

3 1. The City Council after public notice and hearing and in consideration of the
4 above constituting the inquiry contemplated under the franchise agreement does hereby grant the
5 eight year extension until December 31, 2014, under Section 9 of the franchise agreement.

6 2. That the franchise agreement adopted under Ordinance No. 16713 approved
7 12/22/1994, as amended by Ordinance No. 17359 approved 6/25/1998, and as modified herein is
8 hereby approved.

9 3. Given the new natural gas regulatory framework under the State PSC after LB
10 790 (2003) the City here restates its intention to receive an annual report from Aquila, in a form
11 harmonious with the PSC required annual filing. In addition, the City will continue to direct
12 Aquila to foster competition under the franchise, and here renews its long-standing request in
13 this regard for Aquila to offer commercial class transport customers service under standard
14 merchant agreements and customer verification forms at posted transportation rates; and

15 4. Unless expressly directed otherwise by the City Council or the Mayor, Aquila
16 shall “roll-over” any overcollection or undercollection of the franchise fee on an annualized
17 basis, adding any overcollection or undercollection over the next succeeding 12 months. No
18 action of the City is necessary or shall be required to request or direct this “roll-over”
19 reconciliation. In the event Aquila shall fail, neglect or refuse to do so, the obligation shall be
20 deemed continuing and each day thereafter shall be a separate violation of the requirements of
21 the franchise without any setoff, reduction or other impact whatsoever on the amount of
22 franchise fee due to the City.

1 5. Regarding the Lincoln Lateral constructed by agreement between the City and
2 Aquila, the related Memorandum of Understanding (City Resolution A-73037) approved in 1989
3 limits Aquila's cost recovery to straight line 26 Year depreciation on the related "not to exceed"
4 cost of \$3.5 million. Aquila shall continue to abide by the Memorandum of Understanding and
5 any related Ordinances or Resolutions of the City.

6 6. Aquila has contemporaneous to this ordinance filed an Historical Franchise Fee
7 reconciliation to bring the aggregate undercollection of the Franchise Fee current to the date of
8 this ordinance. Nothing in this action shall constitute a waiver or release by the City of any
9 obligation of Aquila to pay amounts due under the franchise, or to link, connect or otherwise
10 allow Aquila to setoff, reduce or otherwise avoid any duties or obligations to timely pay the
11 franchise fee due to the City based on amounts collected from customers or for any other reason,
12 said obligation to pay the related franchise fee to remain inviolate.

Introduced by:

Approved as to Form & Legality:

City Attorney

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| Approved this ____ day of _____, 2006: _____ Mayor |
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