

UTILITY EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is granted this ____ day of _____, 2016 ("Effective Date"), by CITY OF COMMERCE CITY, a home rule municipality existing pursuant to the laws of the State of Colorado ("Grantor"), to UNITED POWER, INC., a Colorado limited corporation ("Grantee"), for good and valuable consideration, the receipt of which is hereby acknowledged, as follows:

1. The Grantor grants to the Grantee, its agents, successors, and assigns, a non-exclusive and permanent easement on the Grantor's property described in Exhibit A ("Easement Property"), which exhibit is attached and incorporated into this Easement, for the rights to construct, operate, maintain, repair, inspect, and replace utility facilities and appurtenant fixtures and devices ("Facilities"), including the right to reasonable related vehicle and equipment access for the purpose of construction and maintenance of the Facilities ("Easement")

2. The Grantee, for itself and for its successors, agents, lessees, and assigns, will construct and maintain the Facilities in accordance with applicable law and with all required permits. The Grantee shall restore, as nearly as reasonable, the general surface of the Easement Property, except as necessary to operate the Facilities, to the grade and condition immediately prior to any construction, including the restoration of vegetation.

3. The Grantee shall pay or cause to be paid all costs for work done by or on behalf of the Grantee or any of its designees, contractors, or assigns occupying or performing work on or adjacent to any portion of the Easement Property. The Grantee shall keep the Easement Property free and clear of any mechanic's liens or other liens on account of work done or performed on behalf of the Grantee.

4. This Agreement and the Easement shall in no way limit, impair, or supplant any provisions or applicability of the City of Commerce City Revised Municipal Code or the provisions of the Grantee's existing franchise agreement with the Grantor, which shall control all aspects of the construction, installation and maintenance of the utility lines.

5. The Grantor shall not be required to maintain the Facilities. The Grantor retains the right to the undisturbed use and occupancy of the Easement Property insofar as such use and occupancy is consistent with and does not impair the Grantee's use of the Easement. The Grantor reserves the right to grant additional easements within the Easement Property, including to other utilities, subject to the rights granted to Grantee under this Agreement. Notwithstanding any the foregoing, the Grantor may temporarily restrict use of the Easement Property for reasonable periods of time, to perform maintenance or construction activities within the Easement Property.

6. The Grantee acknowledges and agrees that the Easement is subject to all prior rights, rights-of-way, easements, and other encumbrances affecting the Easement Property.

7. The Grantee shall cause all contractors and subcontractors performing work on or about the Easement Property to take all necessary safety measures with respect to the construction and maintenance activities. The Grantee shall require all contractors and subcontractors performing work on or about the Property to name the Grantor as an additional named insured with respect to any applicable insurance policies (except for worker's compensation policies).

8. The Grantee shall be liable and responsible for any and all damages (except for ordinary wear and tear) to persons or property caused by or arising out of the actions, obligations or omissions of the Grantee or its employees, agents, representatives, contractors or other persons acting under the Grantee's

direction or control in the exercise of Grantee's rights and obligations under this Agreement or the Easement. The Grantee shall indemnify and hold harmless the Grantor, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, actual and reasonable attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of the Grantee within the Easement Property, and/or its employees, agents or representatives or other persons acting under Grantee's direction or control within the Easement Property. The provisions set forth in this paragraph shall survive the termination of this Easement or this Agreement.

9. The Easement shall run with the land and apply to all interests now owned or hereafter acquired to the above-described property.

10. This Agreement shall remain in effect and may be terminated only upon the Grantee's material breach of this Agreement that is not cured within thirty days of the Grantor's provision of written notice of the breach to the Grantee. If the Grantee abandons its rights in the Easement and ceases to use the same, all right, title and interest of the Grantee under this Agreement shall cease and terminate and the Grantor shall remove the Facilities at its sole expense at the Grantor's request.

IN WITNESS WHEREOF, the undersigned has set his hands effective the day and year first above written.

CITY OF COMMERCE CITY

Sean Ford, Mayor

APPROVED AS TO FORM:

Robert D. Sheesley, City Attorney

ATTEST:

Laura J. Bauer, MMC, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The above and foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Sean Ford, Mayor of the City of Commerce City.

Notary Public

My commission expires: _____