

R/W # _____

GRANT OF NON-EXCLUSIVE UTILITY EASEMENT

The CITY OF COMMERCE CITY, COLORADO, GRANTOR (whether one or more), whose address is 7887 East 60th Avenue, Commerce City, Colorado 80022, in consideration of Ten and 00/100 Dollars (\$10.00) and other valuable consideration, receipt of which is hereby acknowledged, grants and conveys unto UNITED POWER, INC., GRANTEE, whose address is 500 Cooperative Way, Brighton, Colorado 80603, its successors and assigns, a perpetual, non-exclusive utility easement (the "Grant of Easement"), which includes the right to construct, operate, maintain, replace, enlarge, reconstruct, improve, inspect, repair and remove underground utility, electrical and communications facilities and all fixtures and devices appurtenant thereto, as may from time to time be useful to, or required by Grantee, under and across the following described property in the County of Adams, State of Colorado, to-wit:

See Exhibit "A" attached hereto and incorporated herein by reference (the "Easement Area").

Provided, however, this Grant of Easement shall in no way limit, impair or supplant the provisions or applicability of the City of Commerce City's Land Development Code (Commerce City Revised Municipal Code, Chapter 21) or the provisions of the Franchise Agreement among the parties effective July 13, 2011, pursuant to City of Commerce City Ordinance No. 1867.

Grantee shall have the right of ingress and egress 24 hours a day, 7 days a week, over and across the lands of Grantor to and from the above-described easement to survey, construct, operate, maintain, replace, enlarge, reconstruct, improve, inspect, repair and remove utility, electrical and communications facilities and all fixtures and devices appurtenant thereto, and the right to remove any objects interfering therewith, including but not limited to, the trimming of trees and bushes as may be necessary. Provided, however, all such access shall be made via existing vehicular roadways or pedestrian walkways, and no objects shall be removed, unless the express, written permission of Grantor is obtained.

Grantee shall also have the right to use only the adjacent lands of Grantor during surveying, construction, maintenance, replacement, enlargement, reconstruction, improvement, inspection, repairs and removal as may be required to permit the operation of standard utility construction or repair machinery or the operation of any other company within the boundaries of this easement. Provided, however, Grantee shall provided written notice to Grantor not less than fifteen (15) day prior to Grantee's use of the TCE Area except in the event of an emergency, in which event notice shall be provided to Grantor as soon as is reasonably practical.

This Grant of Easement is non-exclusive. Therefore, Grantor expressly reserves the right, for itself and the providers of other public utilities, to access and make use of the Easement Area for the purposes of locating, constructing, reconstructing, repairing, relocating, removing, replacing, enlarging, inspecting and maintaining one or more utilities within the Easement Area so long as such uses of the Easement Area do not unreasonably interfere with the rights granted to Grantee hereunder.

Grantor further reserves the right to occupy, use and landscape the Easement Area for all purposes not inconsistent with the rights granted to Grantee hereunder so long as said use does not damage or unreasonably interfere with the Grantee's facilities or the construction, operation, maintenance, replacement, enlargement, reconstruction, improvement, inspection, repair and removal thereof. Grantor shall not plant any tree or bush within 5.0 feet of any existing Grantee facilities or within 10.0 feet of the opening side of any transformer or cabinet without the prior written approval of Grantee. Grantor shall not install, or permit the installation of, any buildings or permanent structures or facilities of any kind on, over, under, or across said easement without the prior written approval of Grantee.

Grantee shall cause all contractors and subcontractors performing work on or about the Easements to take all necessary safety measures with respect to the construction and maintenance activities thereon. Upon completion of construction, Grantee shall restore the surface of Grantor's property to substantially the same level and condition as existed prior to construction.

Grantee shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Grantee or its employees, agents, representatives or other persons acting under Grantee's direction or control in the exercise of Grantee's rights and obligations under this Grant of Agreement. Grantee shall indemnify and hold harmless 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, 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 actions or omissions of Grantee and/or its employees, agents or representatives or other persons acting under Grantee’s direction or control unless such claim or action results from the negligence or willful misconduct of the Indemnified Parties. The provisions set forth in this Section shall survive the satisfaction, expiration or termination of this Grant of Agreement.

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

Each and every one of the benefits and burdens of this Grant of Easement shall run with the land and shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto. The rights of Grantee hereunder may be exercised by its employees, licensees, contractors and permittees.

The venue for any dispute arising from this Grant of Easement shall be in the courts of Adams County, Colorado.

Unless special provisions are listed below and/or attached, the above constitutes the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this Grant of Easement.

SIGNED AND SEALED BY GRANTOR this ____ day of _____, 20__.

GRANTOR: CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Approved as to form:

Laura J. Bauer, CMC, City Clerk

Robert Sheesley, Senior Assistant City Attorney

STATE OF COLORADO)
)
COUNTY OF ADAMS)

ACKNOWLEDGEMENT

I, _____, a Notary Public for said County and State, do hereby certify that Sean Ford, Mayor of the City of Commerce City, personally came before me this day and executed the foregoing Grant of Non-Exclusive Utility Easement as his own act and deed on behalf of the City of Commerce City.

WITNESS my hand and official Notarial Seal, this ____ day of _____, 2015.

Notary Public

My Commission Expires:

Exhibit “A”