

## UTILITY EASEMENT

UTILITY EASEMENT (the "Easement") is made this \_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), by CITY OF COMMERCE CITY, a home rule municipality existing pursuant to the laws of the State of Colorado with an address of 7887 E. 60th Avenue, Commerce City, CO 80022 ("City or Grantor"), to UNITED POWER, INC., with a principal place of business at 500 Cooperative Way, Brighton, CO 80603 ("Grantee") and referred to collectively as Parties.

The Parties hereto, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the adequacy of which is acknowledged by the Parties, the following agreements and understandings are made:

**1. GRANT OF EASEMENT.** Grantor grants to Grantee, its agents, successors, and assigns, a perpetual and non-exclusive easement over, across, under, on and through the Property, as depicted in more detail on **Exhibit A** attached hereto and incorporated herein ("Easement Property"), for the construction, operation, maintenance, replacement, enlargement, reconstruction, improvement, inspection, repairs and removal of underground utility, electrical and communications facilities and all fixtures and devices appurtenances (the "Facilities"), together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement ("Easement"). The Easement shall include a right to use as much of City's adjacent property as reasonably necessary to install, inspect, maintain, repair, and replace the Facilities, provided such use shall not continue for more than 60 consecutive days and provided further that Grantee restores the property used and repairs any damage to the land and any improvements or fixtures there on.

**2. OTHER TERMS.**

- a. Grantor, for itself and for its successors, agents, lessees, and assigns, does hereby covenant and agree that no permanent building or permanent structure shall be placed on the Easement Property.
- b. The Grantee shall have and exercise the right of subjacent and lateral support for the full and complete use of the Easement. Grantee assumes the risk that Grantor's use of the Easement Property may damage or otherwise impair Grantee's use or access to Facilities. Any construction upon or adjacent to the Easement Property shall conform to the requirements concerning excavation codified at Title 9, Article 1.5 of the Colorado Revised Statutes.
- c. Grantee agrees to hold harmless the Grantor from any and all claims arising from the use of Easement Property by Grantee, its successors, agents, licensees, or guests. Grantee and its successors, assigns, together with licensees, and guests, agree to release the Grantor from any and all claims arising from the construction, installation, use, maintenance, repair replacement, operations or other acts associated with the Facilities on the Easement Property, except for claims arising from negligence on the part of or the willful misconduct of the Grantor, its successors and assigns, and its agents and employees for which the Grantor may be liable under applicable law. Grantee shall be responsible for, and shall fully indemnify the Grantor for any corrective action (including risk assessment, active remediation, passive remediation, voluntary cleanup, investigation, and monitoring) of any environmental contamination resulting from Grantee's use of the Easement Property, including without limitation the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water,

groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

**3. RESERVATION OF USE AND OCCUPANCY.**

- a. Grantor retains the right to the use and occupancy of the Easement Property, even if said use is inconsistent with Grantee's ability to access its Facilities. Grantor retains the rights to occupy the surface of the Easement Property for the purpose of constructing, maintaining, or accessing the detention pond, or any improvements upon Grantor's adjacent property, to the extent that Grantor does not disturb Grantee's Facilities.
- b. Insofar as such use and occupancy is consistent with the terms of this Easement and does not impair the Grantee's use or the purpose of the Easement. Grantee's rights to use the Easement Property as provided by this Agreement shall be subordinate to Grantor's rights provided herein.
- c. Grantee shall provide notice to Grantor concerning any construction, or maintenance to Grantee's Facilities.

**4. ENFORCEABILITY; NO WAIVER.** If a court of competent jurisdiction holds any provision of this Easement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Easement. Neither Grantor's nor the Grantee's failure to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the Grantor's or the Grantee's failure, in any one or more instances, to exercise any option, privilege, or right, shall in no way be construed to constitute a waiver, relinquishment, or release of such obligations, covenants, or agreements, nor forbearance by Grantor or the Grantee of any default under this Easement shall in any manner be construed as a waiver of such default.

**5. ASSIGNMENT.** Grantee may only assign its rights under this Easement upon consent from Grantor.

**6. NO WAIVER OF GOVERNMENTAL IMMUNITY.** No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

7. **EASEMENT TO RUN WITH LAND; RECORDATION.** The Easement shall run with the land and perpetually encumber the above-described Property.

8. **WARRANTY OF TITLE.** Grantor has not and does not make any express, implied, or statutory warranties or representations of any kind to Grantee concerning Grantor's Title to Easement Property.

9. **REVOCATION.** Grantor reserves the right to relocate this Easement in the event that Grantee's Facilities need to be relocated to allow for Grantor's use of adjacent property. In the event that Grantor exercises this right of revocation, Grantor will provide an alternative location for Grantee's Facilities.

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

**GRANTEE**

UNITED POWER, INC.

By: \_\_\_\_\_  
Bryant Robbins  
Chief Operating Officer

ATTEST (if necessary)

By: \_\_\_\_\_  
Name  
Title

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF ADAMS     )

Signed before me on this \_\_\_ day of \_\_\_\_\_, 2023, by Bryant Robbins, as Chief Operating Officer, of United Power Inc.

My Commission expires: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public

**THE CITY OF COMMERCE CITY, CO**

\_\_\_\_\_  
Steven J. Douglas, Mayor

ATTEST:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**Legal Description of Property**