

## **AGREEMENT FOR SERVICES**

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this 27<sup>th</sup> day of July, 2020 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and United Power, Inc., a cooperative utility provider with a principal place of business at 500 Cooperative Way, Brighton, Colorado 80603 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required services.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **I. SCOPE OF SERVICES**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

### **II. TERM AND TERMINATION**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein. Contractor is not obligated to begin performing its work under the Scope of Services until after receiving notice to proceed from the Town, which shall include affirmation that the Town has secured all necessary easements or rights-of-way for Contractor's obligations under the Scope of Services to proceed.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

### **III. COMPENSATION**

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$34,307.31 (the "Commitment Fee"). The Town shall pay the Commitment Fee within 30 days of the Effective Date. The Commitment Fee is a cost estimate for Contractor to perform the Scope of Services. The estimate is valid for 90 days from the date the estimate is provided to the Town, per Tariff E-004, on file with the Colorado Public Utilities Commission or available on request. Contractor shall not commence the Scope of Services until the Town has paid the Commitment Fee in full. In accordance with Contractor's Tariff E-007, on file with the Colorado Public Utilities Commission or available on request, Contractor will analyze the final cost of the Scope of Services on completion and compare it to the Commitment Fee. If the actual cost is less than the Commitment Fee, Contractor shall refund the difference to the Town. If the actual cost to Contractor is greater than the Commitment Fee, the Town shall pay the difference to Contractor within 30 days of receiving written notice of such additional amount.

### **IV. RESPONSIBILITY**

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: 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; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; 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.

## **V. OWNERSHIP**

For the avoidance of doubt, it is hereby recognized that, despite its financial contribution to the construction of the power facilities, the Town will not have any right, title, or interest in the ownership thereof, which shall be vested in Contractor or its affiliates. Notwithstanding the foregoing, any equipment or materials installed by the Town connecting to Contractor's power facilities shall be owned and maintained by the Town.

## **VI. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees, agents, or subcontractors of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

## **VII. INSURANCE**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## **VIII. INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the professional error, negligence, or willful misconduct of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

## **IX. ILLEGAL ALIENS**

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor

provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

## **X. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications. This Agreement expressly supersedes any terms stated in the letter from Contractor to the Town dated June 30, 2020 regarding Work Order #202006022, which purports to include additional terms to which the Town cannot agree.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado



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## NO EMPLOYEE AFFIDAVIT

*[To be completed only if Contractor has no employees]*

**1. Check and complete one:**

☐ I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Erie (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

☐ I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

***[To be completed only if Contractor participates in the  
Department of Labor Lawful Presence Verification Program]***

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

Date \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

(S E A L)

**Notary Public**



## **EXHIBIT A SCOPE OF SERVICES**

### **Contractor's Duties**

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Contractor shall provide electric service for Erie Community Center EV Chargers, located at 450 Powers St. (see Exhibit B, Design).
- Contractor shall perform all trenching and backfilling, including any rock removal and backhoe work, in accordance with Contractor's specifications, except street crossings.
- Contractor shall install the facilities described herein in accordance with good engineering practice after the Town has established any required rights-of-way, cut easements to final grade, and prior to the paving of any streets and the construction of any curbs and gutters. If the Town requests a change in scope to the project, which would increase Contractor's costs, the Parties shall negotiate a new agreement in good faith. During such negotiations, this Agreement may be terminated, or a moratorium may be place on the covenants and obligations under this Agreement, as agreed by the Parties, until negotiations are complete.
- Contractor shall be responsible for locating all public utilities through Colorado 811.

### **Contractor's Deliverables**

Beyond the term of this Agreement, Contractor shall continue providing Electric service to the location stated above at Contractor's applicable rates and upon the terms and conditions now in effect or at the rates and upon such terms and conditions as may hereafter be lawfully adopted by Contractor for such service.

To enable Contractor to perform the Services described herein, the Town agrees as follows:

- The Town grants Contractor the right to enter the location stated above in this Exhibit A to construct, operate, and maintain the electric distribution facilities, together with full right of ingress and egress over Town-controlled property.
- The Town shall perform all right-of-way clearing required for the construction of the facilities described above to Contractor's specifications.
- The Town shall establish and stake all easements of rights-of-way on land owned by the Town for installation of Contractor's facilities. The Town shall assume all responsibility for proper location thereof.
- The Town shall complete, sign, and return to Contractor the Private Facilities Locate Form provided by Contractor (excluding subdivision developments and overhead projects), indicating any private utilities in the project area.
- The Town shall accurately locate and visibly mark all private underground utilities prior to the construction of any facilities by Contractor. Any damages to unmarked private

underground utilities by Contractor or Contractor's subcontractors will be at the Town's expense and responsibility to repair.

- The Town shall be responsible for coordinating all construction activities. Third-party installation crews must be on site the day(s) Contractor digs the trench. Contractor will not leave the trench open overnight and will close it at the end of each working day. The Town shall reimburse Contractor for any expenses incurred by Company to repair damages to its facilities caused by the Town or its other contractors during the construction period.
- The Town is responsible for any and all necessary service laterals. The Town can find a list of Contractor-approved service lateral contractors on Contractor's website at [www.unitedpower.com](http://www.unitedpower.com) under the New Construction tab, by selecting Construction Projects, then New Metering, or by calling the construction hotline at 303-637-1323.
- If the Town terminates this Agreement prior to completion of Contractor's electric facilities, Contractor may retain a portion or all of the Commitment Fee equal to Contractor's expenses or liabilities incurred prior to the date of termination. Contractor shall then refund any remaining balance of the Commitment Fee to the Town.