

**COLORADO DEPARTMENT OF TRANSPORTATION  
INCURRED COST CONTRACT (REIMBURSABLE)**

Project Sub-Account #

Project Number:

SH:

Project Name:

**THIS CONTRACT**, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation (“CDOT” or “the State”) and \_\_\_\_\_ (“Utility Owner”).

**WHEREAS:**

The authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment;

1. The required approval, clearance and coordination has been accomplished from and with all appropriate agencies;
2. The State anticipates performance of construction Project No. for construction of, hereinafter referred to as “the highway project”;
3. The highway project necessitates adjustment or relocation of the Utility Owner’s facilities, and/or affords the Utility Owner with the opportunity to construct improvements to its system, hereinafter referred to as the “Work”, and is generally described as follows:

The above materials shall be installed within the State highway right-of-way as more fully shown on the “Highway Construction Plan Sheets” attached hereto as **Exhibit “A”**;

4. The Utility Owner is responsible for the cost of the Work, as more fully shown on the “Tabulation of Bids” attached hereto as **Exhibit “B”**;
5. The Utility Owner is willing to reimburse the State for all expenses incurred in performance of the Work;
6. The State’s construction contractor can perform the Work in conjunction with construction of the highway project;
7. It is in the public interest for the State and the Utility Owner to consolidate their respective responsibilities and activities so as to lessen the impact of construction upon the general public;
8. The State and the Utility Owner desire to consolidate the performance of the Work with the construction of the highway project, and set forth their respective obligations and responsibilities with respect to the Work and the funding thereof; and
9. This contract is executed by the State under the authority of §43-1-110 and §43-1-114, C.R.S. as amended.

**NOW THEREFORE, THE STATE AND THE UTILITY OWNER AGREE:**

1. The State will provide liaison with the Utility Owner through the State's Region Utilities Engineer (RUE), who is available at:

The RUE can be reached at \_\_\_\_\_ and will coordinate all State activities under this contract.

2. The Work shall be depicted in detail in **Exhibit A**, "Highway Construction Plan Sheets" and **Exhibit B**, "Tabulation of Bids" and the costs associated therewith within, for the above-referenced project, copies of which are attached hereto and made a part hereof. The plans and specifications for the Work, hereinafter referred to as the "\_\_\_\_\_."
3. The bid documents shall be prepared by the State, and will include all bid items necessary for performance of the Work, and shall be made a part of this contract by reference.
4. The State will award, or has already awarded, a construction contract for the highway project, including the Work, pursuant to the provisions of §24-92-101, C.R.S., et seq., as amended. The State shall be the sole authority for awarding said construction contract.
5. The Utility Owner shall give immediate written notification to the State if it desires any revision of the Work. The State shall then incorporate any mutually acceptable revisions into the Work, and the Utility Owner shall be responsible for all costs of the revised Work and shall pay such costs in accordance with the provisions of paragraph 8, below.
6. The State, through its construction contractor, shall perform and complete the Work in accordance with **Exhibit A**, **Exhibit B**, and the Highway Construction Plan Sheets. Both the State and the Utility Owner will jointly supervise the performance of the Work, which shall include, but not be limited to, field and office engineering, construction inspection and materials testing, and traffic control through the Work area.
7. The Utility Owner shall cooperate and coordinate with the State in the performance of the Work. During construction, a Utility Owner representative shall periodically observe the performance of the Work to ensure that the Utility Owner's interests with regard to the Work are being fulfilled. Upon completion of the Work, the Utility Owner shall provide the State with final written approval and acceptance of the Work, which approval shall not be unreasonably withheld provided that performance of the Work has been completed in substantial conformance with **Exhibit A** and **Exhibit B**, and with the Highway Construction Plan Sheets. The Utility Owner's inspector shall communicate with the State's construction contractor only through the State's engineer and shall not be directly involved with the State's construction contractor.
8. The Utility Owner shall reimburse the State for the cost of the Work as set forth in **Exhibit A**. Total Work costs shall include and be expressed as physical construction costs, as derived from estimated quantities at the State's construction contractor's contract unit prices.
9. The Utility Owner's share of the Work costs is estimated to be \$ \_\_\_\_\_ as set forth in **Exhibit B**, and shall be the maximum amount of the Utility Owner's obligation unless such amount is increased by a written amendment to this contract.
10. The Utility Owner has appropriated sufficient funds to pay for the costs of Work that will be completed within the Utility Owner's current fiscal year. For Work to be completed in subsequent fiscal years, if any, the Utility Owner shall make all necessary good faith efforts to effectuate the availability of sufficient funds. In the event funds are not so appropriated by the Utility Owner, the Utility Owner shall promptly notify the State of such fact so that the additional Work can be deleted from the project.
11. The State will invoice the Utility Owner for the total amount to be reimbursed upon substantial completion of the Work. The Utility Owner will promptly pay the invoiced amount to the State no later than 30 days after the invoice date.

12. Contractor payments will be paid from project funds until the State is reimbursed for the Work.
13. The State agrees to make all project records available to the Utility Owner up to three (3) years after substantial completion of the highway construction project in the event the Utility Owner desires to audit the same for cost verification purposes.
14. The term of this contract shall begin on the date signed by the State Controller, and shall extend to the date which is three months after the date of final payment or final audit, whichever is pertinent to this contract, unless earlier terminated.
15. This contract shall inure to the benefit of and be binding upon the parties, their successors and assigns.
16. Either the State or the Utility Owner may terminate this contract at any time upon reasonable notice for cause, or convenience, or if funds become unavailable, provided that the Utility Owner shall reimburse the State for the incurred cost of actual Work performed for the benefit of the Utility Owner up to the termination date.
17. The Utility Owner represents and warrants that it has taken all necessary actions that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this contract on behalf of the Utility Owner and to bind the Utility Owner to its terms.

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

Persons signing for the Utility Owner hereby swear and affirm that they are authorized to act on behalf of the Utility Owner and acknowledge that the State is relying on their representations to that effect and accept personal responsibility for any and all damages the State may incur for any errors in such representation.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed in triplicate by their respective officials thereto duly authorized.

**UTILITY OWNER**

**Name:** \_\_\_\_\_

Printed Legal Name of Utility Owner  
As registered with the Colorado Secretary of State

**Name:** \_\_\_\_\_

Signature of Authorized Representative\*

**By:** \_\_\_\_\_

Printed Name and Title of Authorized Representative

**STATE OF COLORADO**

**John W. Hickenlooper, GOVERNOR**

**By:** \_\_\_\_\_

Chief Engineer  
Colorado Department of Transportation

**LEGAL REVIEW:**

Attorney General, John W. Suthers

By \_\_\_\_\_

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

Section 24-30-202, C.R.S. requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for goods and/or services provided.

**State Controller  
David J. McDermott, CPA**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_