

## COLORADO DEPARTMENT OF TRANSPORTATION STANDARD UTILITY AGREEMENT

This Agreement is for : <input checked="" type="checkbox"/> Engineering Design <input type="checkbox"/> Construction Work <input checked="" type="checkbox"/> Construction Inspection	Utility Project #: NH 5501-011	Utility WBS Element: 12979.10.20
	Const. Project #: N/A	Const WBS Element: 22420
	Location: US 550 Segment 4	PR #: 700075692
	Routing Number: 18-HA5-ZK-00011	

**THIS "AGREEMENT" or "Contract"** is between the State of Colorado acting by and through Colorado Department of Transportation ("State" or "CDOT") and **FLORIDA CONSOLIDATED DITCH COMPANY** ("Owner")

### RECITALS:

1. It is necessary for CDOT to make certain improvements to the State Highway System (the "Highway Improvements") which are located within La Plata County, on State Highway US 550 between mile point 10.84 and 13.98.
2. The Highway Improvements require the Owner to relocate, adjust, or install utility facilities ("the Work"), which is generally described as follows:

**Design review for Mason lateral irrigation relocation..**

3. Authority exists in law and funds have been budgeted, appropriated, and otherwise made available by CDOT for the Work.
4. All citations to rules, codes, documents, and laws refer to the most recent versions.
5. The Owner's Preliminary Plans (see Exhibit D) outline the Work. The Owner shall prepare detailed plans in conformance with Part 645, Subpart A of Title 23, Code of Federal Regulations (23 CFR 645A).
6. CDOT is authorized to pay the Owner for the performance of the Work pursuant to Sections 43-1-225, CRS or 43-1-208, CRS.
7. CDOT and the Owner must comply with 23 CFR 645 and 2 CCR 601-18 ("Highway Utility Accommodation Code"); to obtain federal participation in the costs of the Work.
8. CDOT and the Owner desire to complete the Work as soon as possible.

### NOW THEREFORE, THE PARTIES AGREE:

1. **Incorporations By Reference, Order of Precedence.** The following are incorporated as terms and conditions of this Agreement. Items a and c are publically available, item b is included in Paragraph 20 and items d through f are attached to the Agreement.
  - a. Title 23, Code of Federal Regulations, Part 645;
  - b. The Special Provisions in Paragraph 20;
  - c. 2 CCR 601-18 ("Highway Utility Accommodation Code");
  - d. Utility Agreement Details ( see Exhibit A);
  - e. Sample Option Letter ( see Exhibit B);
  - f. Owner's Cost Estimate ( see Exhibit C);
  - g. Owner's Preliminary Plans (see Exhibit D).

Any conflict between such terms shall be resolved by the priority they are listed above. This Agreement shall be subject to the conflicting terms contained in item a, but shall prevail over conflicting terms contained in items b through g.

2. **Effective Date; Notice of Nonliability; Notice to Proceed.** This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (the "Effective Date"). The State shall not be liable to pay or reimburse Owner for any performance hereunder, including but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date. CDOT

will issue a written notice to proceed ("Notice to Proceed") authorizing the Owner to proceed with the Work on or after the Effective Date. The Owner shall not begin performance of the Work until receipt of the written Notice to Proceed from CDOT. Upon receipt of written Notice to Proceed, the Owner shall diligently perform the Work without interfering with the Highway Improvements or causing avoidable delay. The Owner shall perform the Work in accordance with all terms and conditions of this Agreement.

3. **Timeframe for Completion of Work.** The Owner shall coordinate the Work with the Highway Improvements' construction, as directed by CDOT, and shall complete the Work within 1,825 days of the date on the Notice to Proceed.
4. **Reimbursement.** CDOT will reimburse the Owner for all "Eligible Costs" (as defined by 23 CFR 645) of the estimated costs of the Work (see Exhibit C). The amount CDOT pays the Owner under this Agreement will be full compensation for all Eligible Costs incurred by the Owner while performing the Work.
5. **Determination of Work Costs.** The Owner will determine the direct and indirect work costs (as defined by 23 CFR 645) ("Work Costs") accumulated under a work order accounting procedure prescribed by a federal or State regulatory body for the Work, which shall not exceed \$21,500.00 and is the maximum amount payable under this Agreement to Owner by the State, as determined by the State from available funds. If the Work Costs are greater than \$80,000.00, CDOT may retain 10% of said billed Work Costs, up to a maximum of 5% of the original Agreement amount, prior to the required audit by CDOT, pursuant to section 24-91-103, CRS. If CDOT retains payments pending an audit, CDOT will either pay the Owner for Eligible Costs in excess of any previous payments, or the Owner will reimburse CDOT for any previous payments in excess of Eligible Costs.
6. **Work Costs In Excess of Original Estimate.** If, during the performance of the Work, the Owner discovers that estimated Work Costs (see Exhibit C) are undervalued, the Owner must obtain an Option Letter (see Exhibit B) or other amendment to this Agreement. CDOT will not pay for Work or Work Costs incurred prior to that Work or Work Cost being authorized on a fully executed document, such as this Agreement, an Option Letter, or other amendment to this Agreement. The Owner must itemize all Work Cost increases on the final billing.
7. **Timeframe for Submission of Billings.** The Owner must submit all billings to CDOT for Work Costs not later than 120 days after completing the Work. CDOT will pay the Owner no more than once per month for satisfactory Work that is properly invoiced.
8. **Separate Invoice for Easements.** The Owner must invoice CDOT separately for all Work Costs incurred to acquire an easement or replacement right-of-way under this Agreement.
9. **Salvage Value of Materials Removed.** The Owner must credit CDOT for the value of all salvaged materials removed during the Work, as explained in 23 CFR 645.117(h). The Owner shall not dispose of any salvage materials without CDOT inspection and approval of such disposal.
10. **Recording Costs.** The Owner and its subcontractors, if any, shall develop and record all Work Costs in accordance with 23 CFR 645.117 and any other applicable regulations or procedures. The Owner shall provide CDOT with all information and reports required by State or federal statute, rules, regulations, or industry standards.
11. **Records Retention.** The Owner shall maintain a complete file of all records, documents, communications, and/or other written materials which pertain to the Work. Further, the Owner shall maintain such records for a period of three (3) years after the latter of: the date of termination of this Agreement, final payment for the Work, or resolution of pending matters related to the Work. The Owner shall be the custodian of all such records, documents, communications, and other materials, however, these items shall be the property of CDOT, and shall be maintained by the Owner in a reasonably usable and retrievable manner. This provision shall survive any termination clause.
12. **Audit, Inspection of Records, and Monitoring.** The Owner shall permit CDOT, the Federal Government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Owner's records during the term of this Agreement and for the period of record retention described immediately above. This provision shall survive any termination clause. The Owner shall also

permit the State, Federal Government, or any other duly authorized agent of a governmental agency to monitor all activities conducted by the Owner pursuant to the terms of this Agreement. The Owner shall further permit the monitor to review procedures and data, test materials, conduct visual inspections, perform on-site inspections, or any other reasonable procedure.

13. **Term of Agreement.** Unless otherwise terminated in accordance with provisions of this Agreement, this Agreement will terminate on the date CDOT makes final payment to the Owner.
14. **Early Termination in the Public Interest.** CDOT may terminate this Agreement at any time CDOT determines that the Work no longer serves the best interest of CDOT and its public. CDOT shall effect such termination by giving at least twenty (20) days advanced written notice of the termination date. In the event of termination under this provision, the Owner shall be entitled to receive just and equitable compensation for any satisfactory Work completed. Upon termination, the Owner shall be obligated to immediately return any payment, information, or materials related to the Work.
15. **Early Termination for Cause.** If the Owner fails to perform in accordance with any provision of this Agreement, CDOT shall give the Owner written notice of such failure, at least ten (10) days to cure or justifiably explain such failure, and CDOT's intent to terminate this Agreement for cause. If such cure or explanation is not satisfactorily resolved after at least ten (10) days, CDOT may terminate the Agreement. If the Agreement is terminated for cause, Owner shall be obligated to immediately return any payment, information, or materials related to the Work. If the Agreement is terminated for cause but it is later determined that the Agreement should not have been terminated for cause, the rights and obligations of the parties shall be as described in the preceding provision related to termination in the public interest.
16. **Indemnification.** The Owner shall indemnify, save, and hold harmless CDOT, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Owner, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Agreement. This provision shall survive the termination of the Agreement. CDOT may withhold payments due to Owner pending resolution of any matter of indemnification.
17. **Option Letter.** CDOT may increase or decrease payment for Work Costs pursuant to this Agreement by using an Option Letter for this Agreement substantially similar to Exhibit B. Any other modifications not within the terms of this Paragraph must be executed by formal amendment to the Agreement.
18. **Federal/State Requirements.** The Owner shall strictly adhere to and comply with all applicable State and Federal laws, rules and regulations in performance of the Work. The Owner shall also require compliance with these statutes and regulations in all subcontractor agreements permitted under this Agreement. The Owner must obtain CDOT approval prior to award of any subcontract between the Owner and any other party for the performance of any part of the Work.
  - a. "Buy America" Requirements. All manufacturing processes, including the application of a coating, for all steel and iron products permanently incorporated in the work shall have occurred in the United States of America. All manufacturing processes are defined as "processes required to change the raw ore or scrap metal into the finished, in-place steel or iron product". This requirement will not prevent a minimal use of foreign steel or iron provided the total project delivered cost of all such steel and iron which includes the cost of delivering the steel and iron to the project, does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater. If there is any foreign steel or iron permanently incorporated into the project the Contractor shall provide documentation of the project delivered cost of that foreign steel or iron.
  - b. The Contractor shall maintain on file certifications that every process, including the application of a coating, performed on steel or iron products either has or has not been carried out in the United States of America. This certification applies to every iron or steel product that requires pre-inspection, pretesting, certified test results, or a certificate of compliance. The Contractor shall obtain such a certification from each supplier, distributor, fabricator, and manufacturer that has handled each steel or iron product. These certifications shall create a chain of custody trail that includes every supplier, distributor, fabricator, and manufacturer that handles the steel or iron product. The lack of these certifications will be justification for rejection of the steel or iron product.

- c. The State, FHWA, and their representatives shall be allowed access to this documentation upon request. Prior to the permanent incorporation into the project of steel or iron products the Contractor shall certify in writing that the documentation is on file and the steel or iron products are in compliance with this requirement.”
19. **Legal Authority.** The Owner, by and through its signatory, warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to lawfully bind the Owner to the Agreement.
20. **Special Provisions.** These Special Provisions apply to all contracts except where noted in italics.
1. **Controller's Approval.** §24-30-202(1), C.R.S. This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.
  2. **Fund Availability.** §24-30-202(5.5), C.R.S. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
  3. **Governmental Immunity.** No term or condition of this Contract 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, §24-10-101, *et seq.*, C.R.S., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.
  4. **Independent Contractor.** The Owner shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Owner nor any agent or employee of the Owner shall be deemed to be an agent or employee of the State. The Owner and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for the Owner or any of its agents or employees. Unemployment insurance benefits will be available to the Owner and its employees and agents only if such coverage is made available by the Owner or a third party. The Owner shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. The Owner shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. The Owner shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
  5. **Compliance with Law.** The Owner shall strictly comply with all applicable State and Federal laws, rules and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
  6. **Choice of Law.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.
  7. **Binding Arbitration Prohibited.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
  8. **Software Piracy Prohibition.** Governor's Executive Order D 002 00. State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Owner hereby certifies and warrants that, during the term of this Contract and any extensions, the Owner has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State

determines that the Owner is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **Employee Financial Interest/Conflict of Interest.** CRS §§24-18-201 and 24-50-507, C.R.S. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. The Owner has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Owner's services and the Owner shall not employ any person having such known interests.
10. **Vendor Offset.** §§24-30-202 (1) and 24-30-202.4, C.R.S. [*Not Applicable to intergovernmental agreements*]  
Subject to §24-30-202.4 (3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in §39-21-101, et seq., C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **Public Contracts for Services.** §8-17.5-101, C.R.S. [*Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*]  
The Owner certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the Department program established pursuant to §8-17.5-102(5)(c), C.R.S. The Owner shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Owner that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Owner (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Owner has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If the Owner participates in the Department program, the Owner shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that the Owner has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If the Owner fails to comply with any requirement of this provision or §8-17.5-101 et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, the Owner shall be liable for damages.
12. **Public Contracts with Natural Persons.** §24-76.5-101, C.R.S. The Owner, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Contract.

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

<p>* Persons signing for Owner hereby swear and affirm that they are authorized to act on behalf of the Owner and acknowledge that CDOT is relying on their representations to that effect and accept personal responsibility for any and all damages CDOT may incur for any errors in such representation.</p>	
<p><b>Utility Owner</b> <b>FLORIDA CONSOLIDATED DITCH COMPANY</b> By: <u>J. Regan Cole</u> Name of Authorized Individual Title: <u>Board President</u> Official Title of Authorized Individual By: <u>J. Regan Cole</u> Signature Date: <u>7-12-18</u></p>	<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper</b> <b>Department of Transportation</b> By: <u>Joshua Laipply</u> Joshua Laipply, P.E., Chief Engineer (For) Michael P. Lewis, Executive Director Date: <u>7/17/2018</u></p>
<p><b>2nd signature</b> <b>(If Necessary)</b> By: _____ (print name) Title: _____ (print title) By: _____ Signature Date: _____</p>	<p><b>STATE OF COLORADO</b> <b>LEGAL REVIEW</b> <b>Cynthia H. Coffman, Attorney General</b> By: <u>N/A</u> Signature – Assistant Attorney General Date: _____</p>

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

<p>§24-30-202, C.R.S. requires the State Controller to approve all State contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. The Owner is not authorized to begin performance of the Work until such time. If Owner begins performing the Work prior thereto, the State of Colorado is not obligated to pay Contactor for such performance or for any goods and/or services provided hereunder.</p>	
<p><b>STATE OF COLORADO</b> <b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b> By: <u>[Signature]</u> Colorado Department of Transportation Date: <u>7/27/18</u></p>	

COLORADO DEPARTMENT OF TRANSPORTATION		Exhibit A
UTILITY AGREEMENT DETAILS		
N/A	This Agreement provides for reimbursement of the following costs: <input checked="" type="checkbox"/> Preliminary engineering by: <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Consultant <input type="checkbox"/> Construction/Traffic by: <input type="checkbox"/> Owner <input type="checkbox"/> SubAgreementor <input checked="" type="checkbox"/> Construction engineering/inspection by: <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Consultant	
	Existing utilities in conflict with highway construction are: <input checked="" type="checkbox"/> on existing CDOT right of way <input checked="" type="checkbox"/> on right of way CDOT will acquire or has since acquired	
	Adjusted and/or relocated utilities will be located: <input checked="" type="checkbox"/> within ultimate CDOT right of way <input checked="" type="checkbox"/> within an easement acquired for the owner	
N/A	Proof of real property interest or eligibility for reimbursement is: <input type="checkbox"/> Recorded title: County: _____ book: _____ page: _____	
N/A	<input type="checkbox"/> Affidavit (attached) Form #:	
	<input type="checkbox"/> Local ordinance #: <b>CRS 37-86-102</b> date: _____	
N/A	<input type="checkbox"/> Easement (copies attached)	
N/A	<input type="checkbox"/> Governmental subdivision (C.R.S. Sec.43-1-225)	
	A consultant was retained through: <input type="checkbox"/> Competitive negotiation (attach certification of consultant). <input checked="" type="checkbox"/> Existing ongoing written Agreement (attach certification of consultant).	
N/A	A construction subAgreementor was or will be selected through: <input type="checkbox"/> competitive bidding <input type="checkbox"/> existing ongoing written Agreement	
N/A	List any low-cost incidental work (eg., tree trimming, x-ray weld inspection, etc.) to be reimbursed under this Agreement which will be awarded without competitive bidding:          	
N/A	If CDOT and the Owner are each responsible for a share of the total relocation costs, the estimate and subsequent billings will be based on: <input type="checkbox"/> Actual costs attributable to CDOT <input type="checkbox"/> Total work adjusted to CDOT's pro-rata share (document method of apportionment in estimate).	
N/A	The work will involve: <input type="checkbox"/> Replacement of a building, pumping station, substation, or any other similar unit (include credit for expired service life in estimate).	
N/A	<input type="checkbox"/> Betterment of a facility, other than one required by current industry codes or standards (include credit for betterment in estimate).	
N/A	<input type="checkbox"/> Recovery of materials for later reuse by Owner (include credit in estimate for salvage exceeding \$5,000 at current stock prices).	
Where will the records of this Work be maintained and where shall the executed Agreement documents be sent? Attention: <b>Pete Foster P.E., Wright Water Eng.</b> Address: <b>1666 N. Main, Ste C Durango 81301</b>		Who will be the field liaison representative on this adjustment? Name: Address: (if different)
Phone # & e-mail address: <b>970 259-7411 pfoster@wrightwater.com</b>		Phone # & e-mail address:
CDOT representative signature and title:  		Phone #: <b>970 385-1407 kevin.walters@state.co</b>

**FOR INFORMATION ONLY**

**STATE UTILITY AGREEMENT DETAILS NOTES**

Exhibit A facilitates the Agreement review process and documents conformance with applicable cost reimbursement criteria. Federal regulations on this subject are contained in 23 CFR, Parts 172, 635, and 645A. These regulations include conditions and limitations on federal-aid participation in utility relocation costs. The following notes explain certain requirements to guide the preparation of this and other Agreement documents.

**ENGINEERING AND/OR CONSTRUCTION BY OWNERS FORCES:** Owner must be adequately staffed and equipped to perform satisfactorily and in a timely fashion; Construction work must be of a minor nature routinely performed by the Owner's forces. (23 CFR 645.109, 635.205(b) and 45.115(a))

**ENGINEERING CONSULTANT SERVICES:** 1) Consultant selection subject to CDOT approval; sub-Agreements exceeding \$25,000 subject to price evaluation and approval by CDOT Agreements and Consultants Office. (23 CFR 172.7) 2) Consultant under existing ongoing written Agreement must regularly provide similar services for Owner's non-highway-related work; approval subject to finding by CDOT that costs are reasonable. (23 CFR 645.109(b))

**CONSTRUCTION SUBCONTRACTS:** Construction under existing ongoing written Agreement subject to finding by CDOT that costs are reasonable. (23 CFR 645.115(a)(3))

**INCIDENTAL WORK:** Incidental work awarded without competitive bidding subject to finding by CDOT that costs are reasonable. (23 CFR 645.115(a)(4))

**UTILITY PERMIT REQUIREMENT:** CDOT permit required if adjusted facilities are located within ultimate CDOT right-of-way.

**EXCHANGING OF EASEMENTS:** If replacement right-of-way is to be acquired, the CDOT Region Right-of-Way section must handle the exchanging of easements with the Owner.

**PLAN DETAIL:** Detail plans to illustrate the work covered by Agreement. Verify the location of existing and proposed facilities with respect to right-of-way boundaries and planned highway construction. Show existing facilities in red and proposed facilities in green.

The CDOT representative signature on CDOT Utility Agreements Details certifies conformance with applicable cost reimbursement criteria. Supporting documentation, if not included as part of this Agreement, is maintained in the project file and provided upon request.

**FOR INFORMATION ONLY**



**SAMPLE OPTION LETTER**

**Exhibit B**

*NOTE: This option is limited to the specific Agreement scenario listed below AND cannot be used in place of exercising a formal amendment.*

<b>FY:</b>	<b>Old Routing #</b>	<b>Old PO #</b>
<b>Option Letter #</b>	<b>New Routing #</b>	<b>New PO # (if applicable)</b>

**A. FUNDING LEVEL UPDATE:** Revised OWNER'S COST ESTIMATE (see Exhibit C-1) is attached.

**B. REQUIRED PROVISIONS:** In accordance with Paragraph 17 of the original Agreement between the State of Colorado acting by and through the Colorado Department of Transportation ("CDOT") and \_\_\_\_\_ (the "Owner"), dated \_\_\_\_\_ ("Agreement"), CDOT hereby exercises its option to increase/decrease Work Costs (as defined in Paragraph 5 of the Agreement) based on changes in the Work as specified on the attached revised Owner's Cost Estimate on Exhibit C-1. Exhibit C to the Agreement is hereby deleted in its entirety and Exhibit C-1 is hereby incorporated by reference into the Agreement.

The amount of Work Costs is increased/decreased by \$\_\_\_\_\_ to a new Agreement value of \$\_\_\_\_\_ as consideration for Work ordered under the Agreement. Paragraph 5 Determination of Work Costs in the Agreement is hereby modified accordingly. The total Agreement value including all previous amendments, option letters, etc. is \$\_\_\_\_\_.

The effective date of this Option Letter is upon approval of CDOT Controller or delegate, whichever is later.

**STATE OF COLORADO**

John W. Hickenlooper, Governor

By: \_\_\_\_\_  
 for the Executive Director  
 Colorado Department of Transportation

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

§24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. The Owner is not authorized to begin performance until such time. If the Owner begins performing prior thereto, the State of Colorado is not obligated to pay the Owner for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
 David J. McDermott, CPA

By: \_\_\_\_\_  
 Colorado Department of Transportation

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



**Wright Water Engineers, Inc.**

1666 N. Main Avenue, Suite C  
Durango, Colorado 81301  
(970) 259-7411 TEL  
(970) 259-8758 FAX

www.wrightwater.com  
e-mail: pfooster@wrightwater.com

March 21, 2018

**Via Email: justincatalanocfqh@gmail.com**

Justin Catalano  
Florida Consolidated Ditch Company  
PO Box 2138  
Durango, CO 81302

**Re: Colorado Highway 550 Project – Mason Lateral Review**

Dear Mr. Catalano:

Wright Water Engineers, Inc. (WWE) is pleased to provide this proposal to provide an initial site visit, development of a Basis of Design Memorandum, multiple plans review, and construction observation for the Colorado Highway 550 construction project in the vicinity of the Mason Lateral on behalf of the Florida Consolidated Ditch Company (FCDC). The proposed modifications to Highway 550 include widening the highway, adding turn lanes and acceleration/deceleration lanes, and modifying intersections in the vicinity of the FCDC Mason Lateral which results in relocation and/or piping of a portion of the irrigation lateral.

WWE has worked for the FCDC for almost 12 years and is familiar with the operational needs of the FCDC. In addition, WWE has extensive experience with other irrigation systems throughout western Colorado. WWE will rely on this background and experience to review the impact of the proposed Highway 550 project on FCDC facilities.

**Scope of Work and Remuneration**

***Task 1 – Initial Meeting, Site Visit and Basis of Design Memorandum***

WWE proposes to have an initial meeting with CDOT to discuss the project (already completed), conduct an initial site visit and perform an engineering review of draft construction plans for Highway 550 impacts to the FCDC Mason Lateral and its features, including any headgates, diversion structures, and drop structures. This review will include considerations for continued service to the Mason Lateral shareholders.

WWE will prepare a written Basis of Design Memorandum summarizing our findings, comments, and recommendations which can be used by CDOT as a basis for modifications to the Mason Lateral as applicable. As available, WWE will provide CDOT with any standard details for the structures we are reviewing based on FCDC standards and specifications. The standard details might be available in hardcopy format only; WWE has not included time in this Scope for drafting hardcopy details into an AutoCAD or MicroStation compatible formats.

DENVER  
(303) 480-1700 TEL (303) 480-1020 FAX

GLENWOOD SPRINGS  
(970) 945-7755 TEL (970) 945-9210 FAX

Justin Catalano  
March 21, 2018  
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**Task 3 – First Review of Updated Plans**

WWE will conduct an engineering review of updated draft construction plans for Highway 550 impacts to the FCDC Mason Lateral and its features after CDOT has incorporated the information provided in the Basis of Design Memorandum into the construction plans.

WWE will provide the FCDC with a written summary of this review in the form of a technical letter documenting any additional recommendations or comments.

**Task 4 – Second Review of Updated Plans**

WWE will conduct a second round of engineering review on updated draft construction plans for Highway 550 impacts to the FCDC Mason Lateral and its features after CDOT has incorporated and addressed the recommendations and comments provided as part of the first review letter.

WWE will provide FCDC with a written summary of this review in the form of a technical letter documenting any additional recommendations or comments.

**Task 5 – Construction Observation**

WWE will provide onsite construction observations services as a representative of FCDC during the construction phase of the project. WWE will provide FCDC with regular written updates throughout the duration of the construction period and develop site observation reports to document WWE's observations during construction.

For the purposes of establishing a construction observation budget estimate, WWE has assumed weekly site visits for a month-long construction period. This observation time estimate may need to increase in the event unforeseen conditions arise during construction, or the construction duration is extended beyond the expected construction period.

**Assumptions**

The following assumptions apply to the Scope of Work presented herein:

- Includes time for one half to full day site visit to the project location. Additional site visits (other than those expected during the construction observation phase) are not included.
- The time period between WWE's review of CDOT plans is timely and does not require WWE staff to refamiliarize themselves with the plans between review periods.
- The construction observation services budget estimate assumes a one-month construction period and weekly site visits (4 total).

WWE proposes to provide these services on an hourly basis in accordance with the attached Project Labor Hours and Fees by Task Worksheet and rate schedule. WWE's total fee estimate to


Justin Catalano  
March 21, 2018  
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complete the Scope of Services described above is approximately \$21,500, including direct expenses.

We look forward to working with you and the FCDC to execute the required agreement(s) to initiate the work.

Sincerely,

WRIGHT WATER ENGINEERS, INC.

By   
Peter R. Foster, P.E.  
Vice-President

Attachment:

WWE Project Agreement  
WWE Project Labor Hours and Fees by Task Worksheet  
WWE 2018 Rate Sheet

cc: Roger Cole, Board President, Florida Consolidated Ditch Company

P:\061-110\180 CDOT Hwy 550 Mason Lateral Engineering Review\01 Admin\20180317 FCDC - Mason Lateral Review.docx

# WRIGHT WATER ENGINEERS, INC. PROJECT AGREEMENT



<b>Project Name:</b>	FCDC CDOT Hwy 550 Mason Lateral Engineering Review	<b>Project Number:</b>	061-110.180
<b>Client Name:</b>	Florida Consolidated Ditch Company	<b>Project Manager:</b>	Pete Foster
<b>Project Address:</b>	P.O. Box 2138 Durango, CO 81302	<b>Billing Address:</b>	P.O. Box 2138 Durango, CO 81302
<b>Attention:</b>	Roger Cole	<b>Telephone:</b>	(970) 749-4675
		<b>Email:</b>	coleranchhay@durango.net:

**Scope of Services :** (X) Attachment A, proposal dated: 3 /21/18  
Or: () as stated as follows:

Prior to commencement of work, a retainer of \$ N/A will be received to be credited against the final billing. Client shall compensate Wright Water Engineers, Inc. for an amount not to exceed \$21,500 billed on an hourly basis and invoiced monthly for services and expenses as set forth in the attached Schedule of Hourly Rates (Schedule A).

If Wright Water Engineers, Inc. hires an attorney to collect any money due it under this Agreement, Client shall pay Wright Water Engineers, Inc. all reasonable attorney's fees and costs that it incurs in that collection effort.

**Acceptance by Client:**

<b>For:</b>	FCDC	<b>Wright Water Engineers, Inc.</b>
<b>Date:</b>	4-6-18	3/21/18
<b>By:</b>	 Signature	 Signature
	J. Roger Cole - President (Print name and title)	Peter R. Foster, P.E., Vice President (Print name and title)

**Acceptance by Agent of Client:**

The undersigned represents and warrants that he is the duly appointed and authorized agent of the Client and that he is authorized by the Client to enter into this Agreement, in the amount specified, on behalf of the Client. However, the undersigned agrees that if the Client does not pay Wright Water Engineers, Inc. the monies due it, when due, under this Agreement that the undersigned will guarantee that obligation by promptly making payment to Wright Water Engineers, Inc., in full, of the unpaid balance due Wright Water Engineers, Inc. under this Agreement.

**By:** \_\_\_\_\_  
Signature (Print name)

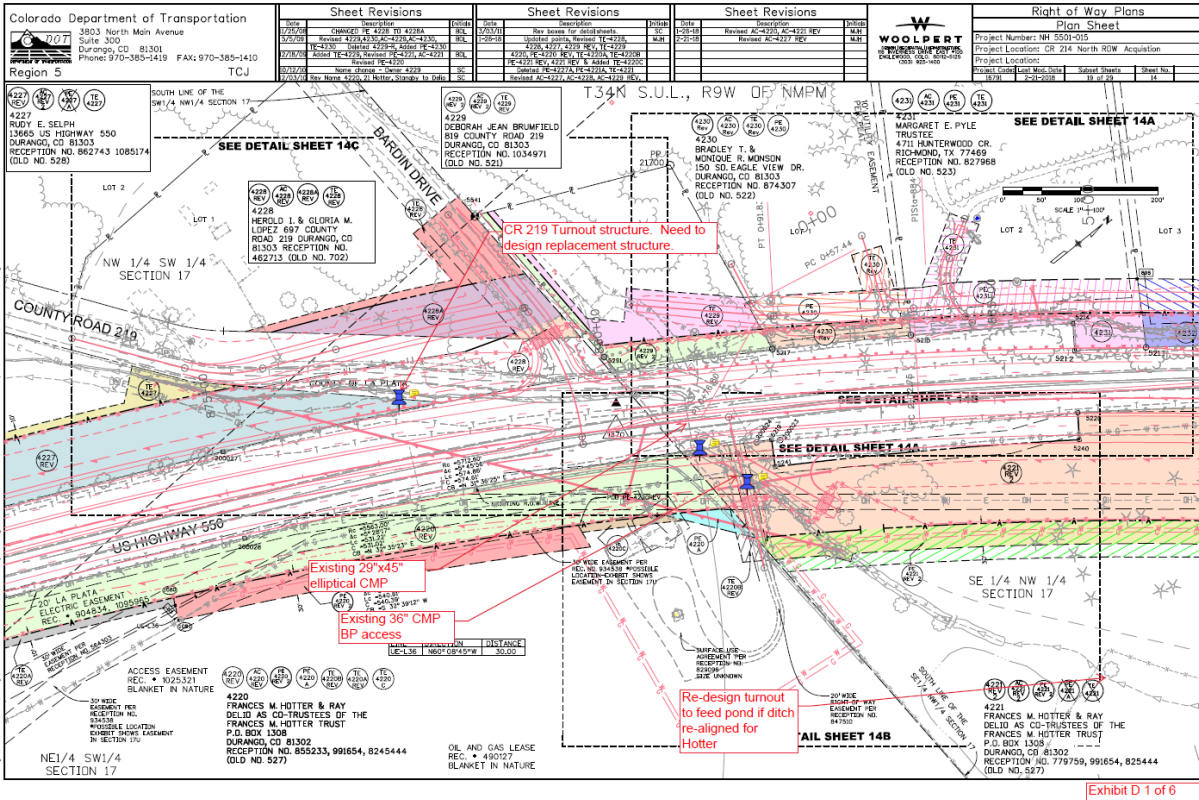
Wright Water Engineers, Inc.  
 Mason Lateral Design Review  
 Date: March 21, 2018

**Project Labor Hours and Fees By Task Worksheet**

Description of Services	Wright Water Engineers, Inc.				Total Fees by Task
	Project Manager Foster	Project Engineer Lenhart	Word Process Johnson	Total Task Manhours	
<b>Task 1 - Initial Meeting, Site Visit with CDOT and Basis of Design Memorandum</b>					
Meeting with CDOT	1	1		2	\$400
Initial review of CDOT Plans	2	6		8	\$1,300
Initial Field Visit with CDOT		8		8	\$1,200
Coordination with FCDC to summarize standards and impacts to lateral users		4		4	\$600
Collect and summarize FCDC design standards		2		2	\$300
Develop Basis of Design Memorandum	2	16	2	20	\$3,000
	<b>Task subtotal</b>			<b>44</b>	<b>\$6,800</b>
<b>Task 3 - First Review of Updated Plans</b>					
Review updated CDOT Plans	1	4		5	\$800
Develop review comment letter	1	8	2	11	\$1,600
Coordination with FCDC and CDOT on review comments	1	2		3	\$500
	<b>Task subtotal</b>			<b>19</b>	<b>\$2,900</b>
<b>Task 4 - Second Review of Updated Plans</b>					
Review updated CDOT Plans	1	4		5	\$800
Develop review comment letter	1	4	2	7	\$1,000
Coordination with FCDC and CDOT on review comments	1	2		3	\$500
	<b>Task subtotal</b>			<b>15</b>	<b>\$2,300</b>
<b>Task 5 - Construction Observation</b>					
Weekly construction observation	4	32		36	\$5,700
Site observation reports and coordination with FCDC	4	12	2	18	\$2,800
	<b>Task subtotal</b>			<b>54</b>	<b>\$8,500</b>
<b>TOTAL MANHOURS</b>	<b>19</b>	<b>105</b>	<b>8</b>	<b>132</b>	<b>\$20,500</b>
HOURLY RATE	\$206	\$152	\$88		
SUBTOTALS	\$3,900	\$16,000	\$700		

Direct Expenses (5% of Total)    \$1,000  
**Wright Water Engineers, Inc. TOTAL    \$21,500**

Exhibit C 5 of 5



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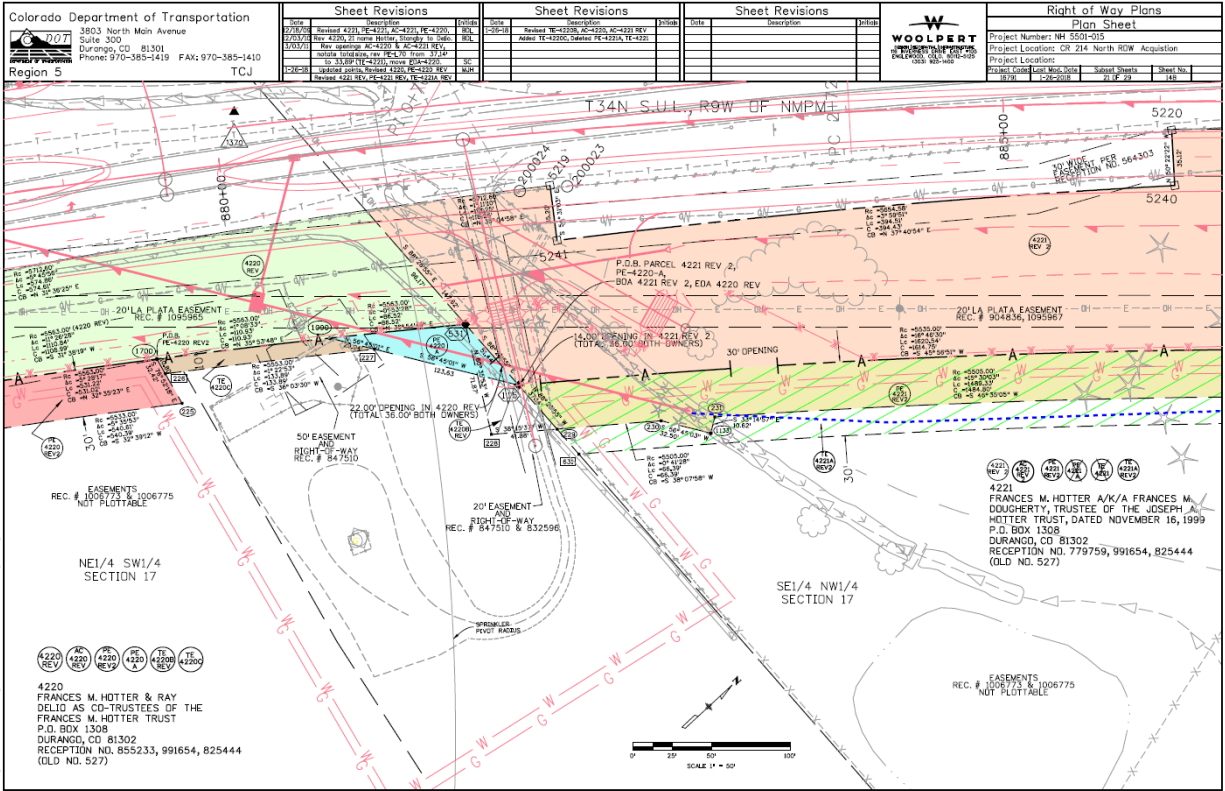
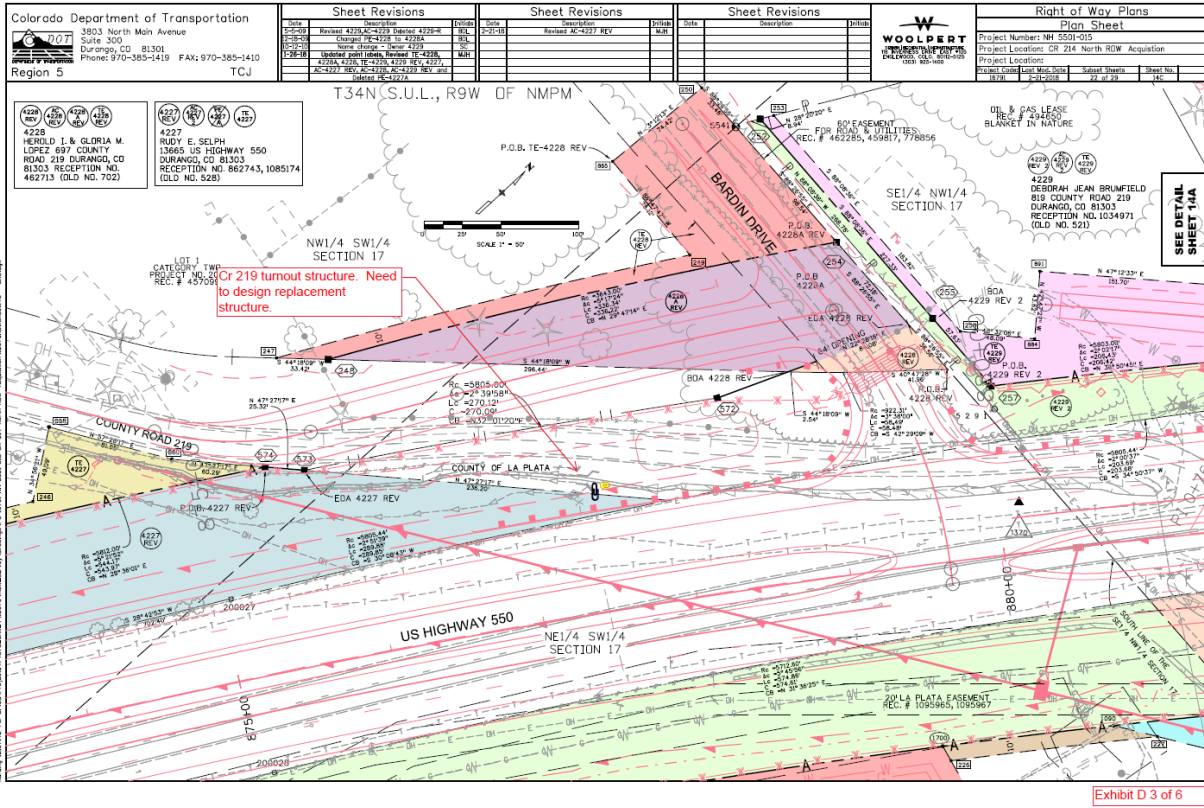


Exhibit D 2 of 6

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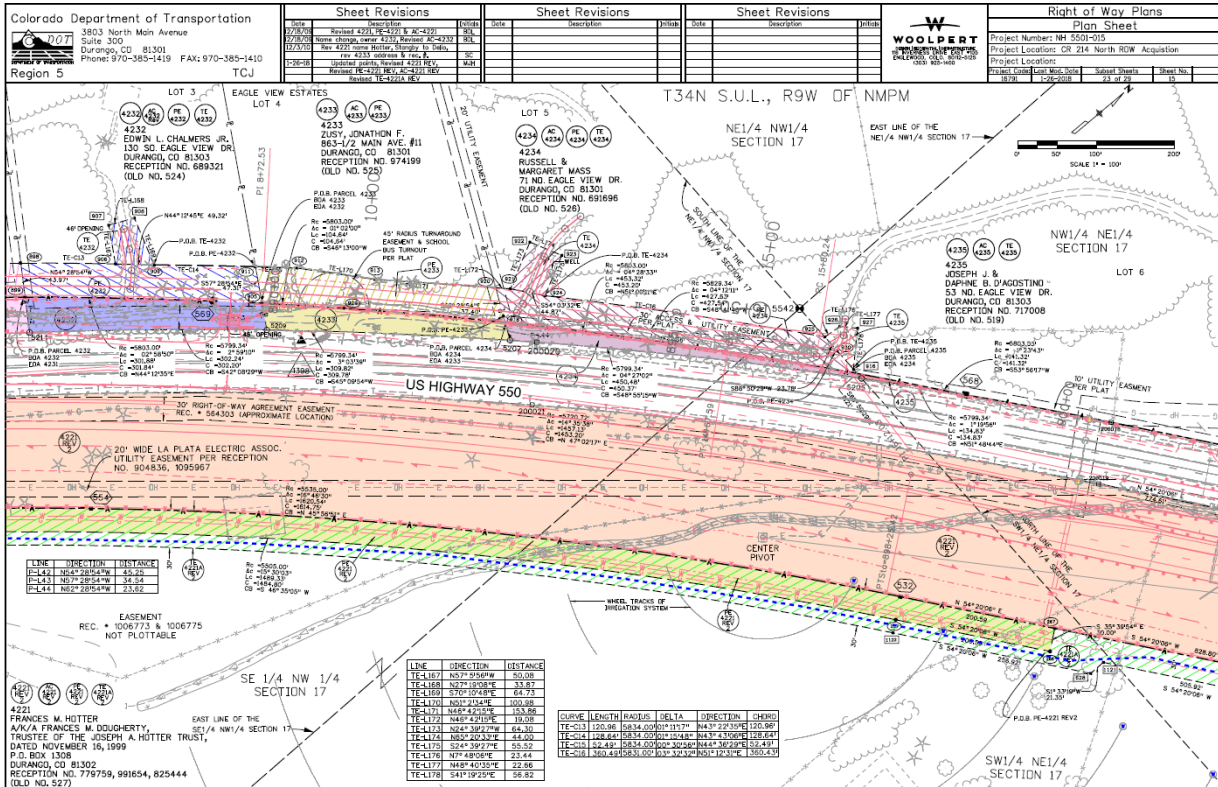


Exhibit D 4 of 6

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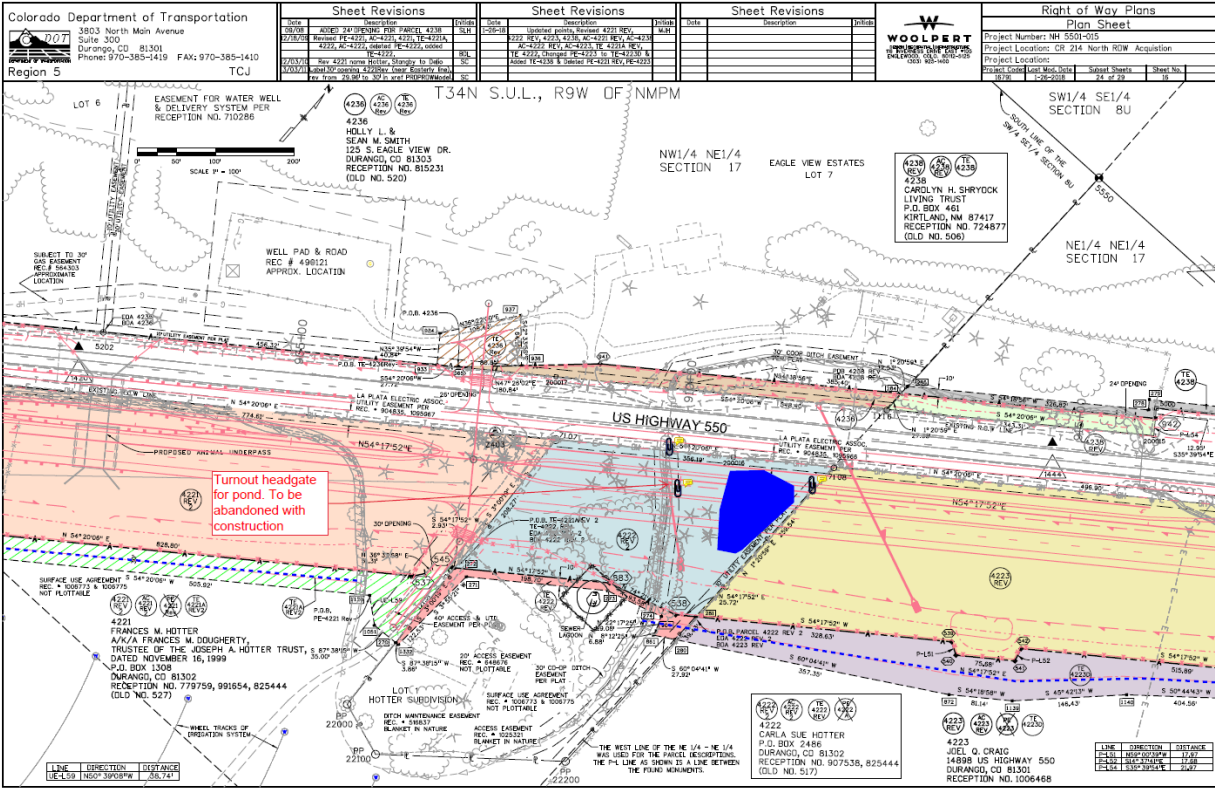
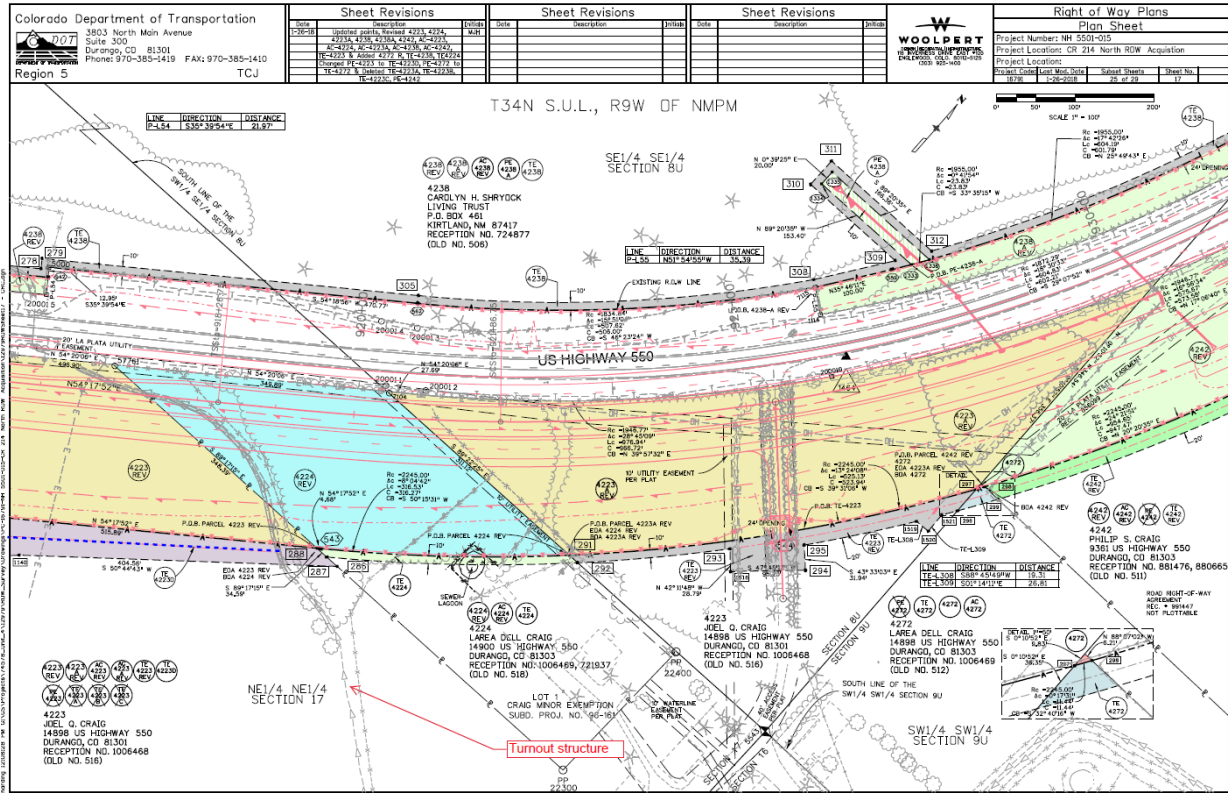


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