CDOT PROJECT # IM 0252-423 SUB: 19039
DESIGN-BUILD PROJECT

PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT

POLITICAL SUBDIVISION (PUBLIC OWNER) ONLY

THIS PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT (hereinafter, "**the PSURA**") made and entered into this _____ day of _____, ~~2014~~ 2015 by and between the **COLORADO DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as **"CDOT",** and **THE CITY OF COLORADO SPRINGS**, a Colorado home rule city and municipal corporation, hereinafter referred to as **"the Owner" (or the "Contractor" for purposes of Exhibit M only)**.

RECITALS

WHEREAS, CDOT is engaged in preparing preliminary plans, specifications and cost estimates for a federally-funded, Design-Build Project, to provide improvements to that certain section of the State Highway System I-25, ~~from Bijou Street to Tejon Street~~ I-25/Cimarron Street (US 24) Interchange Design-Build Project (hereinafter, **"the Project").**

WHEREAS, pursuant to §§ 43-1-1401, et seq., CRS, CDOT intends to solicit Design-Build proposals for the Project, and to require the successful proposer (hereinafter, "**the Contractor**") to complete the design and administer the construction of the Project to completion.

WHEREAS, from time to time, the construction, reconstruction, improvement, maintenance and operation of the Project will require changes to a Utility owned by the Owner. Such activities may require the Owner to relocate, abandon, protect, remove, replace, reinstall and/or modify its Utilities.

WHEREAS, CDOT and the Owner desire to cooperate for the purpose of ensuring that the Utility Work of all Owner-owned Utilities necessary to accommodate the Project is promptly performed, and in close coordination with the Contractor's performance of the Project, in order to minimize delay, uncertainty, and risk, and to eliminate resulting additional Project costs.

WHEREAS, to accomplish that purpose, CDOT and the Owner desire to enter into this PSURA, which contains general terms applicable to such coordination and to the performance of all such Utility Work.

WHEREAS, preliminary design of the Project has identified certain Utilities owned by the Owner at one or more specific location(s) within the scope of the Project that require Relocation or other Utility Work, all as generally shown on the Utility Information Sheet (UIS) for each such location.

WHEREAS, CDOT and the Owner intend to issue one or more Work Orders, as described below, to authorize, order and schedule the preparation of the Utility Relocation Plans and/or of the construction of the Relocations at the UIS location(s) as summarized on the

Utility Tracking Report, as shown on Exhibit A. The Work Orders shall identify the party (the Owner or the Contractor) responsible to prepare the Utility Relocation Plans and/or the construction of the Relocations in conjunction and coordination with the performance of the Project Work.

WHEREAS, this PSURA is intended as an ordering document and it will also encumber funding for the preparation of the Utility Relocation Plan(s) and the construction of the Relocation(s) for ~~Fiber Optic~~City of Colorado Springs and CDOT fiber optics authorized by the Work Order(s) issued under this PSURA.

WHEREAS, pursuant to CRS § 43-1-225 and to applicable federal provisions pertaining to CDOT reimbursement for Utility Work, CDOT is responsible for the cost of the Utility Work for Utilities owned by an Owner that is a political subdivision.

WHEREAS, at all of the UIS location(s) as summarized on the Utility Tracking Report and as shown on Exhibit A, and in order to ensure that the Utility Work at such locations is performed in conjunction and coordination with the Contractor's performance of the Project Work, the following applies:

- For all City of Colorado Springs Traffic and CDOT Fiber Optic Utilities, CDOT and the Owner have determined that it is to their mutual advantage to have the Contractor furnish or perform Utility Work required to accomplish the Relocations as part of the Contractor's performance of the Project Work.

WHEREAS, CDOT is authorized to contract with the Owner concerning the performance of the Utility Work pursuant to Section 43-1-1401 et seq., and 43-1-225, C.R.S., as amended.

WHEREAS, CDOT intends to acquire a replacement easement for any Relocation of the Owner's existing Utilities, where such Utilities are currently located on/in an easement or right of way that is owned by the Owner and that is taken by CDOT for the Project.

WHEREAS, the Owner and CDOT desire to comply with 23 CFR 645 in their performance of the Utility Work under this PSURA, in order to obtain federal participation for the costs of the Utility Work.

WHEREAS, CDOT and the Owner desire to complete the Utility Work as soon as practicable.

WHEREAS, when the Owner delegates the performance of any Utility Work to the Contractor under the terms of this PSURA, the Owner shall not be responsible to CDOT for damages caused by delay in or interference with that performance to the extent provided in § 43-1-1412(I) CRS.

NOW THEREFORE, it is agreed by and between CDOT and the Owner hereto as follows:

1. **STANDARD CONDITIONS.** The following provisions are incorporated herein as terms and conditions of this PSURA. In the event of a conflict or inconsistency between (or among) this PSURA proper, its incorporated material, and/or its exhibits or attachments, such conflict or inconsistency shall be resolved in favor of the more stringent provision.

   A. Title 23, Code of Federal Regulations, Part 645 and the April 2014 edition of the FHWA Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects (collectively, the "Federal Regulation") as may be amended.~~Title 23, Code of Federal Regulations, Part 645 and the January 2003 edition of the FHWA Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects (collectively, the "Federal Regulation") as may be amended.~~

B. Exhibits A through M.

2. **DEFINITIONS.** The definitions contained in Exhibit K shall apply when the terms defined therein are used in this PSURA.

3. **MASTER AGREEMENT.** This PSURA is a Master Agreement which establishes a general framework for processing the Utility Work for Utilities owned by the Owner that need to be relocated or changed for the Project. This PSURA shall apply to all Utility Work that is required for the Project.

A. Delegation to the Contractor. The Owner acknowledges that CDOT will perform the design and construction of the Project by means of a Design-Build Contract (a "DB Contract") with the Contractor, and that CDOT's entry into a DB Contract may have an impact on the Utility Work to be performed hereunder, including, without limitation, matters relating to scheduling and coordination of the Utility Work. Accordingly, CDOT and the Owner agree as follows:

(1) CDOT agrees to require in the DB Contract the Contractor to perform all obligations assigned to the Contractor in this PSURA. In addition, CDOT may delegate to the Contractor the duty to perform certain of CDOT's obligations hereunder in lieu of CDOT performing same, as designated by CDOT in the DB Contract. The Owner agrees to cooperate with the Contractor concerning such performance.

(2) The Contractor may exercise certain of CDOT's rights hereunder, as designated by CDOT in the DB Contract.

(3) Upon its entry into a DB Contract, CDOT agrees to notify the Owner as to the name of the Contractor, as to relevant contact information, and as to the obligations and rights hereunder that have been delegated to the Contractor. CDOT shall provide Owner with a copy of such contract within 30 business days of execution.

(4) The Owner agrees to coordinate its efforts with the Contractor and with CDOT as appropriate in light of the involvement of the Contractor.

B. Federal Regulation. CDOT and the Owner acknowledge that the Project will be subject to the requirements of the Federal Regulation. Provided, however, that the provisions of this PSURA as to the allocation of responsibility for the cost of the Utility Work shall govern in lieu of any contrary provisions of the Federal Regulation.

(1) Notwithstanding any provision of this PSURA that may be to the contrary, all plans, specifications, estimates and billings submitted by the Owner to CDOT for the purpose of receiving reimbursement shall comply with the requirements of the Federal Regulation and with all applicable CDOT requirements.

(2) If any Utility Work is undertaken by the Owner's contractor under a competitive bidding process in a portion of the Project subject to the Federal Regulation, all bidding and contracting shall be conducted in accordance with all federal and state laws and regulations applicable to the Owner and the Project. If requested by CDOT, it shall be a condition of the Owner entering into any contract for Utility Work hereunder that the Contractor furnishes such bonds, insurance and/or indemnities as CDOT may require.

4. **COORDINATION.** The Owner shall coordinate and cooperate with CDOT and the Contractor to ensure that any Utility Work that is needed for the Project is performed promptly and in close coordination with the Contractor's performance of the Project, in

order to minimize delay and uncertainty as to the scope or nature of the Project Work and to eliminate additional cost.

A. As early as possible after the Contractor and/or the Owner has determined that there is a Utility conflict at a specific location, the Contractor shall meet with the respective Utility Owner and confirm the conflict. Following confirmation of the conflict, the Contractor shall initiate a Utility Design Sheet (UDS), Exhibit B, to refine the existing location, condition(s), and the proposed resolution of the conflict(s) as stated on the UIS. CDOT and the Owner shall meet with the Contractor to review the scheduling of the Project Work at the specific UDS location(s) and the proposed resolution of the conflicts. The purpose of the meeting is to coordinate the performance of the Project Work and the incorporation of the Utility Work at the UDS location(s). Despite anything to the contrary in this PSURA, access to Owner's facilities shall be maintained as required by Section 28-C of this PSURA and the current Utility Permit.

B. Relocation of the Owner's Utilities will be avoided whenever it is reasonably possible to do so without causing unreasonable delay in, or substantially increased costs for the Project. When reasonably possible the Owner's Utilities will be left in place and protected. When physical Relocation of the Owner's Utilities cannot be reasonably avoided, the Owner agrees to allow the Relocation of such Utilities and to cooperate with requirements for the Project, in accordance with the provisions of this PSURA.

C. If Relocation of the Owner's Utilities cannot be avoided by a reasonable change in the Contractor's design, the Owner, the Contractor and then CDOT shall promptly execute a Work Order to authorize the performance of the Utility Work at one or more UDS location(s).

D. CDOT, the Owner and the Contractor shall meet as reasonably requested by CDOT to review and coordinate time schedules and to track the Utility Work.

E. The Owner shall not interfere, except by processes as detailed in this agreement, with the performance of the Project Work by any other party. "Interfere" means any action or inaction that interrupts, delays, or damages the Project Work.

5. <u>CONTRACTOR'S SCOPE OF UTILITY WORK FOR PUBLIC UTILITIES</u>. The Utility Work to be performed by the Contractor under the DB Contract for Public Utilities consists of all activities required for the Owner's Utilities at a specific location(s), all as generally described on the UIS and as further refined and described on the UDS. The Contractor's scope of Utility Work for Public Utilities includes, but is not limited to the following activities:

A. Performance of all tasks, obligations and duties assigned to CDOT and/or the Contractor in the Utility Agreements.

B. Identification and verification of Utility locations by investigating all Utilities located within or near the Right-of-Way or otherwise affected by the Project. This may include potholing, if necessary.

C. Preparing the Utility Relocation Plans and the construction of the Relocations including temporary Relocations and all necessary Relocations of Service Lines connecting to such Utilities, regardless of the ownership of such Service Lines or of the property served by such Service Lines.

D. Resurfacing and restriping of streets and parking areas, and reconstruction of curb, gutter, sidewalks and resetting of concrete stop blocks where necessary due to Utility

Work (a) performed by the Contractor, or (b) performed by the Utility Owner within the Right-of-Way, or within the utility easement and permanent easements.

E. Showing each Relocation on the Contractor drawings, for Utility Relocation Plans, then verifying, Accepting and Approving that each impacted Utility, as designed, is compatible with the Project.

F. Verification that all Utility Work performed by the Contractor or by the Utility Owner has been accomplished in accordance with the Contract documents and the Contractor's drawings.

G. Identification and performance of such duties for any replacements for Utility easements to be acquired for Utility Owners.

H. Coordination and schedule verification with all Utility Owners as necessary for all Utility Work.

I. Performing public information for Utility Work.

J. Performing traffic control for Utility Work.

K. Providing survey coordinates on the Utility Relocation Plans and in the field for the construction of the Relocations.

L. Performing Incidental Utility Work.

M. Cooperation with CDOT at the Contractor's expense in connection with negotiating and preparing Utility Agreements. This obligation shall include preparing and providing such written information concerning the Project (such as reports, plans and surveys) as requested by CDOT.

N. Preparation and negotiation of Work Orders and applicable Work Order exhibits and other required materials except for those that by their nature can only be provided by the Utility Owner regardless of who is performing and/or paying for the Utility Work.

O. Performing and coordinating Utility Relocation as-built plans.

P. All necessary Work associated with Utility Work.

Q. Locates for Owner Facilities

i. Contractor shall initiate all dig requests for Owner's infrastructure through the Traffic Field Operations Center and the Utilities Notification Center of Colorado. Owner's standard locate services are limited to locating up to 600 linear project feet per business day, not to exceed one hour of locate time during Owner's business hours of 7:30 A.M. to 3:30 P.M. Owner will attempt to accommodate all reasonable requests that exceed such standard service. The Contractor should make every effort to schedule and make the most efficient use of Owners location services as is practicable. Should the Owner believe that the Contractor is making unreasonable or particularly onerous requests for location services that routinely exceed such standard services, or has service requirements outside of Owner's business day, Contractor shall contract with Owner directly for such services. Contractor shall be solely responsible for all costs and fees associated with additional locate services. If an unreasonable request is made by Contractor, and the parties cannot reach agreement for a solution, the Owner will notify CDOT and the

dispute resolution process set forth in Section 20 shall apply to this situation.

ii. For all locates Owner provides, Contractor shall maintain visibility, use of, and access to such locates for itself and for use by its subcontractors.

iii. Contractor shall provide all traffic control and/or barricades as requested by Owner to facilitate Owner locates.

iv. Owner and Contractor shall meet as reasonably requested by Owner to review and coordinate time schedules and to plan and track locate services.

v. Contractor shall provide Owner with a single point of contact for coordinating locate services.

- Activities excluded from the Contractor's scope of Utility Work are as follows:

A. The obligation assigned to CDOT in the Utility Agreements of collecting payments due from the Utility Owners and/or reimbursing Utility Owners for their costs of performing Utility Work (without limiting the Contractor's obligation to indemnify CDOT and/or the Utility Owners with respect to certain matters, in accordance with Book 1, Section 18.1.6 and/or with the Utility Agreements).

~~B. Utility Removal Work outside of the Right-of-Way.~~ B.

~~C.~~ Providing traffic control when Utility Work is outside of the Right-of-Way.

~~• Furthermore, the following activities are excluded from the Contractor's scope of Utility Work for Owner's Fiber Optic:~~

~~i. Reimbursement of Owner's inspection costs.~~

~~ii. Abandonment of existing Utilities.~~

6. PERFORMANCE OF THE UTILITY WORK.

A. Utility Relocation Plan and Construction of the Relocations.

(1) For all City of Colorado Springs and CDOT Fiber Optic~~-~~, the Contractor shall prepare the Utility Relocation Plan and the construction of the Relocation at all of the UIS location(s) listed on Exhibit A, as may be further refined and described on the Exhibit B UDSs, as part of the Contractor's performance of the Project Work, if so authorized by the Owner by its execution of one or more Work Order(s) in the form described in Exhibit C.

B. Owner's Recent Contractors and Consultants. Where the Contractor prepares the Utility Relocation Plan and/or performs the construction of the Relocation, the Contractor shall use one or more of the subcontractors/subconsultants that are listed on the Owner's Recent Contractor and Consultant List (Exhibit D), and that are approved by the Owner to perform the specific type of Relocation activities, if such subcontractors/subconsultants are reasonably available. The Owner shall supply Exhibit D and update it as needed. The Contractor may use other subcontractors/subconsultants, if they are approved by the Owner, if the Owner

does not provide Exhibit D or if such Owner's Recent listed subcontractors/subconsultants are not reasonably available.

C. Changes to the Preparation of Utility Relocation Plans and to the Construction of the Relocations. The UISs listed on Exhibit A indicate the party responsible for the preparation of the Utility Relocation Plans and the performance of the construction for the Relocations needed at a particular location(s). However, these activities, and/or the party responsible for the performance of these activities, and/or the locations for these activities, may change by the time the activities are to be performed, including due (in part) to changes in the design of the Project and/or resources that may be available to the Owner. In that event, CDOT and the Owner shall indicate any changes in the performance of these activities at a particular location and/or the party responsible for these activities on a Work Order.

7. GENERAL PROCEDURES. The Contractor, the Owner and CDOT shall comply with the general procedures described in Exhibit E – Utility Work Procedure Flow Charts, concerning their respective responsibilities for the preparation of the Utility Relocation Plans, construction of the Relocation and other certain identified activities at a particular UDS location(s).

For City of Colorado Springs and CDOT Fiber Optic Utilities, the Contractor, shall provide Quality Control for the Utility Relocation Plan and for the construction of the Relocations. ~~The Owner or its designated representative shall operate all valves and supervise all shut-offs and disconnections for any Relocation.~~

8. TECHNICAL CRITERIA/PERFORMANCE STANDARDS. Any Utility Work performed by the Contractor shall be consistent with the terms of this PSURA. All Utility Relocation Plans and construction of the Relocations, performed by the Contractor, shall also be consistent with the Owner's written specifications, standards of practice (which may include design format), processes and procedures and construction methods, if any, that are current at the time of the preparation of the Utility Relocation Plans and construction of the Relocations and are uniformly applied by the Owner in its utility Relocations. Owner's Standards and Specifications, as they may be amended from time to time, include:

(1) Standard Material Specifications

(2) Key Component Vendor/Supplier List

In no case shall any Owner approved Utility Relocation Plan for the City of Colorado Springs and CDOT Fiber Optic be valid for more than ~~180~~ 365 Days prior to actual construction. The Owner shall make any such written specifications, standards of practice, processes and procedures and construction methods available to CDOT and the Contractor at the time the Work Order is executed. In the event of a conflict or inconsistency between the terms of this PSURA and the Owner's written specifications, standards of practice, processes and procedures and construction methods, CDOT, in its sole reasonable discretion and in consultation with the owner, shall determine which shall govern.

All Utility Relocation Plans shall be prepared in conformance with the Federal Regulation. Utility Relocation Plans performed by the Contractor shall be subject to review and Approval by the Owner. Utility Relocation Plans performed by the Owner shall be subject to review and Approval by the Contractor to determine that the Utility

Relocation is consistent with the project design. Any such review shall be promptly provided in accordance with timelines, if any, described in this PSURA or a Work Order issued for that Relocation. The final Utility Relocation Plans and specifications shall govern the scope of the Relocation.

9. **RESPONSIBILITY FOR COST.** As between CDOT and the Owner, CDOT shall bear responsibility for the cost of the performance of the Utility Work, since the Owner is a political subdivision of the state. The Contractor shall reimburse the Utility Owners for their construction inspection fees for inspecting the Relocations performed by the Contractor.

10. **SETTLEMENT OF CLAIMS.** Neither the Owner nor CDOT shall be entitled to reimbursement for any Utility Work covered by this PSURA, including costs with respect to real property interests (either acquired or relinquished), except as set forth in this PSURA. The terms and conditions of this paragraph shall prevail over common law, regulatory or administrative provisions governing the subject matter hereof. This PSURA is intended as a full settlement of all claims regarding CDOT's and the Owner's liability for the cost of the Utility Work to which this PSURA applies. Except for the obligations undertaken by CDOT and the Owner pursuant to this PSURA, the Owner and CDOT each waives, releases, and forever discharges the other party, its members, officers, directors, agents, employees, successors and assigns from any and all claims for reimbursement, whether known or unknown, which either party ever had or now has, regarding liability for the cost of the Utility Work necessitated by the Project. This paragraph is intended to address only the issue of liability for the cost of the Utility Work, and does not extend to any tort claims that might arise out of the performance of the Utility Work.

11. **NO LIENS**. CDOT, its agents and Contractors, shall keep the Relocation of Utilities free from any statutory or common law lien arising out of any Utility Work performed, materials furnished or obligations incurred by CDOT, its agents or Contractors. The Owner, its agents and contractors, shall keep the Utilities and the Project and the Project ROW free from any statutory or common law lien arising out of any Utility Work performed, materials furnished or obligations incurred by the Owner, its agents or contractors.

12. **NO OFFSETS**. The Utility Work performed under each Work Order shall be treated as a separate job with separate invoices. There shall be no offsets between amounts owed by one party to the other, whether for the same Work Order or for different Work Orders, except for the Betterment, salvage and/or retirement value credits described herein, for the particular Work Order.

13. **RETENTION OF RECORDS**. Each party shall keep and maintain all books, papers, records, accounting records, files, reports and other material relating to the Utility Work it performs (or has performed) pursuant to this PSURA, including detailed records to support all invoices submitted by each party, for a period of seven years after the date of Acceptance of the completed Utility Work. Each party, FHWA and any other agency providing funding to CDOT (including their respective auditors) shall have access to and shall be entitled to audit all such records during normal business hours upon reasonable notice to the party maintaining such records. CDOT and the Owner shall insert the above requirements into any contracts entered into for performance of Utility Work and shall also include in such contracts a clause requiring their contractors to include the above requirements in any subcontracts or purchase orders. CDOT and the Owner shall mutually agree upon any financial adjustments found necessary by such audit. If CDOT

and the Owner are unable to agree upon any such adjustment, then the dispute shall be resolved pursuant to the "Dispute Resolution" process described in this PSURA.

14. **DEPRECIATION CREDIT.** Depreciation credit can be allowed to CDOT reflecting any depreciation or deterioration of the Utilities being replaced or altered, only to the extent authorized by 23 CFR 645.117(h)(2).

15. **REVIEW AND APPROVAL OF UTILITY RELOCATION PLANS.** Where the Contractor prepares the Utility Relocation Plan, the Owner shall review and approve or disapprove the Utility Relocation Plan prepared by the Contractor by not later than 14 Days after its submission to the Owner, unless a different time period is expressly required in the respective Work Order. The Owner shall execute and provide to the Contractor an Exhibit I(1) – Owner's Utility Relocation Plan Acceptance Letter within that time if the Utility Relocation Plan is consistent with the performance standards described herein. The Owner shall have the right to reject any Utility Relocation Plan that does not meet the performance standards described herein. If the Owner rejects a Utility Relocation Plan, the Owner shall immediately notify the Contractor, in writing, of its grounds for rejection and shall provide recommendations for correcting the problem, and the Owner shall re-review the revised Utility Relocation Plan not later than seven Days after its submission to the Owner, unless a different time period is expressly required in the respective Work Order.

    Where the Owner prepares the Utility Relocation Plan, the Contractor shall review and approve the Utility Relocation Plan prepared by the Owner by not later than 14 Days after its submission to the Contractor, unless a different time period is expressly required in the respective Work Order. The Contractor shall execute and provide to the Owner an Exhibit I(2) – Contractor's Utility Relocation Plan Acceptance Letter and notify the Owner within that time if the Utility Relocation Plan is consistent and compatible with the Project. The Contractor shall have the right to reject any Utility Relocation Plan that is not consistent and compatible with the Project. If the Contractor rejects a Utility Relocation Plan, the Contractor shall immediately notify the Owner, in writing, of its grounds for rejection and shall provide recommendations for correcting the problem, and the Contractor shall re-review the revised Utility Relocation Plan not later than seven Days after its submission to the Contractor, unless a different time period is expressly required in the respective Work Order.

16. **INSPECTION OF RELOCATIONS.**

    A. The Owner may perform inspections of any Relocation that is performed by the Contractor and the Contractor shall bear the cost of the Owner's overtime or after hour inspections fees as required by the Owner. The Owner's designated inspector shall coordinate with the Contractor in connection with any inspections. CDOT will require the Contractor to provide traffic control for any Relocation inspections performed by the Owner.

    B. The Owner shall inspect the Relocation performed by the Contractor by not later than seven Days after its completion of the work or other date as agreed to in the Work Order. The Owner shall accept the Relocation within that time if it is consistent with the performance standards described herein. The Owner shall execute and provide to the Contractor an Exhibit F(1) – Owner's Construction Inspection Acceptance Letter after it determines that such Relocation is acceptable. The Owner shall have the right to reject any Relocation that does not meet the performance standards described herein. If the Owner rejects any Relocation, the Owner shall immediately notify the Contractor, in writing, of its grounds for rejection

and shall provide recommendations for correcting the problem, and the Owner shall re-inspect the Relocation not later than seven Days after the correction is completed.

C. The Owner's inspection, approval and acceptance of the Relocation shall not be construed as a waiver by the Owner of any claim the Owner may have under Applicable Law.

D. When Relocation is performed by the Owner, the Contractor shall execute and provide to the Owner, not later than seven Days after completion of the Relocation, an Exhibit F(2) – Contractor's Construction Inspection Acceptance Letter after it determines that such Relocation is acceptable. The Contractor shall have the right to reject any Relocation that was not constructed per the Utility Relocation Plan. If the Contractor rejects any Relocation, the Contractor shall immediately notify the Owner, in writing, of its grounds for rejection and suggestions for correcting the problem, and the Contractor shall re-inspect the Relocation not later than seven Days after the correction is completed.

17. <u>AS-BUILT PLANS.</u>

A. For Relocations performed by the Contractor, the Contractor shall provide as-built plans to the Owner as soon as practicable but not later than 30 Days after execution of Exhibit F(1) - Owners Construction Inspection Acceptance Letter from the Owner.

B. For Relocations performed by the Owner, the Owner shall provide as-built plans to the Contractor as soon as practicable but not later than 30 Days after execution of an Exhibit F(2) – Contractor's Construction Inspection Acceptance Letter from the Contractor.

18. <u>DEADLINES AND DELAYS</u>.

A. Neither the Owner nor CDOT shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this PSURA, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by Force Majeure.

B. Where the Owner is the party responsible for the preparation of the Utility Relocation Plan and/or the construction of the Relocation described in a Work Order, the Owner shall timely commence, diligently prosecute, and complete such Utility Relocation Plan and/or construction of the Relocation, as applicable, on or before the deadlines established herein or in the applicable Work Order.

C. Except where due to Force Majeure and subject to § 43-1-1412(1), if the Owner fails to meet a deadline established herein or in the applicable Work Order, then the Owner shall reimburse CDOT for the actual documented costs and damages incurred by CDOT or the Contractor arising out of any delay in completion of the portion of the Project resulting from the Owner's delay.

D. Where the Contractor is the party responsible for the performance of the Utility Work described in a Work Order, the Contractor shall timely commence, diligently prosecute, and complete such Utility Work, as applicable, on or before the deadlines established herein or in the applicable Work Order.

E. Except where due to Force Majeure, if the Contractor fails to meet a deadline established herein or in the applicable Work Order, then CDOT shall require the Contractor to reimburse the Owner for the actual documented costs and damages incurred by the Owner resulting from the Contractor's delay.

F. Where either party is responsible to perform certain Utility Work described in a Work Order, in preparation for the other party's performance of the Utility Work, then the first party shall timely commence, diligently prosecute and complete that certain Utility Work on or before the deadline(s) established in the Work Order. If the first party fails to meet such deadline(s), then any affected time deadlines for the other party's performance of the Utility Work shall be revised accordingly.

G. In addition to and without limiting any rights or remedies available under this section or otherwise, if the Owner is the party responsible for the performance of Utility Work described in a Work Order and the Owner fails to complete that Utility Work on or before the deadline established in the applicable Work Order, or if CDOT reasonably determines that the Owner will be unable to timely complete such Utility Work, CDOT (without incurring any liability) may terminate the Owner's performance of that Utility Work by giving notice to the Owner, and may cause the remaining Utility Work thereon to be performed by the Contractor, or CDOT may cause the remaining Utility Work thereon to be performed by another contractor if requested by CDOT and approved by the Owner. If CDOT takes over the Owner's Utility Work pursuant to this paragraph, the costs for such Utility Work by CDOT shall be allocated in accordance with this PSURA and CDOT shall be responsible for 100% of the actual incremental costs over what such Utility Work would have cost had it been performed by the Owner. CDOT and/or its Contractors shall perform such Utility Work in compliance with the Owner's Technical Criteria/Performance Standards, and the Owner shall have the right to accept/inspect (as applicable) such Utility Work.

H. In addition to and without limiting any rights or remedies available under this section or otherwise, if the Contractor is the party responsible for the performance of Utility Work described in a Work Order and the Contractor fails to complete that Utility Work on or before the deadline established in the applicable Work Order, or if CDOT reasonably determines that the Contractor will be unable to timely complete such Utility Work, CDOT (without incurring any liability) may terminate the Contractor's performance of that Utility Work by giving notice to the Contractor, and may cause the remaining Utility Work thereon to be performed by the Owner, or CDOT may cause the remaining Utility Work thereon to be performed by another contractor if requested by CDOT and approved by the Owner. If CDOT takes over the Contractor's Utility Work pursuant to this paragraph, the costs for such Utility Work by CDOT shall be allocated in accordance with this PSURA and CDOT shall be responsible for 100% of the actual incremental costs over what such Utility Work would have cost had it been performed by the Contractor. CDOT and/or its Contractors shall perform such Utility Work in compliance with the Owner's Technical Criteria/Performance Standards, and the Owner shall have the right to accept/inspect (as applicable) such Utility Work.

19. REIMBURSEMENT PROCESS.

A. LUMP SUM COST BASIS. For the preparation of the Utility Relocation Plan and/or the construction of the Relocation, the preferred approach under each Work Order will be reimbursed on a lump sum cost basis, if the parties can agree on a lump sum amount.

B. TIME AND MATERIALS COST BASIS. If the parties cannot agree on a lump sum amount, reimbursement will be based on time and materials basis.

Where the Contractor prepares the Utility Relocation Plan and/or the construction of the Relocation and where the Owner is responsible for the cost, the Owner agrees that the Contractor will prepare the Utility Relocation Plan and/or the construction of

the Relocation in compliance with the provisions of the DB Contract and that the Owner shall pay CDOT the total cost incurred by the Contractor on that basis.

Where the Owner prepares the Utility Relocation Plan and/or the construction of the Relocation and where CDOT is responsible for the cost, the Owner agrees to prepare the Utility Relocation Plan and/or the construction of the Relocation in compliance with its standard practice and that CDOT shall pay the Owner the total cost incurred by the Owner on that basis.

C. ESTIMATE. For each specific UDS location for which the Owner or CDOT bears responsibility for the cost, the party (the Owner or the Contractor) that will prepare the Utility Relocation Plan and/or the construction of the Relocation will prepare an itemized estimate. Each such estimate shall be approved by the party responsible for the cost.

D. REIMBURSEMENT.

(1) Upon completion of the preparation of the Utility Relocation Plan and/or the construction of the Relocation, the performing party shall invoice CDOT for the lump sum amount or the eligible time and material costs (as applicable) and as indicated on the Work Order.

(2) The Owner shall use the Utility Owner Reimbursement Invoice Form - Exhibit G, to submit all invoices to CDOT. An authorized representative of the Owner shall sign each invoice. Payment of all invoices properly submitted shall be due within 90 Days after receipt of Exhibit G.

(3) CDOT shall then reimburse the Owner or Contractor (as applicable). On time and materials cost basis, final adjustments will be made for any increase/decrease in the cost of the preparation of the Utility Relocation Plan and/or the construction of the Relocation.

(4) Reimbursement shall be contingent upon the non-performing party's final acceptance/approval (as applicable) of the performing party's Utility Relocation Plan and/or the construction of the Relocation and all invoices shall be subject to post-audit adjustment.

(5) Notwithstanding any provision of this PSURA to the contrary, unless there is a revised Work Order, if the Owner or the Contractor's invoice (as applicable), for the preparation of the Utility Relocation Plan and/or the construction of the Relocation exceeds the Approved estimated amount, then CDOT shall not be obligated to pay the excess.

(6) All reimbursement shall be subject to compliance with the cost eligibility and reimbursement standards contained in 23 CFR 645.117 of the Federal Regulation and any other applicable regulations or procedures including applicable credits for Betterment and/or salvage and/or retirement value.

E. INVOICES. All invoices for the preparation of the Utility Relocation Plan and/or the construction of the Relocation must be submitted not later than 120 Days after written Acceptance/Approval (as applicable). Any costs for which the Owner or the Contractor does not timely submit invoices to CDOT shall be deemed waived.

F. RIGHT-OF-WAY OR EASEMENT. Costs incurred to acquire replacement ROW or an easement under this PSURA must be invoiced separately.

20. DISPUTE RESOLUTION.

A. Dispute Notice. In the event of any dispute, claim, or controversy arising out of or relating to this PSURA or any Work Order, or any Utility Work involving or otherwise relating to the Project or the Utility Work, the complaining party shall provide a notice of the dispute (dispute notice) to the other party, except where specific performance is required under subparagraph (D) below or where the non-complaining party waives the requirement to provide such dispute notice, in writing. The dispute notice shall describe the facts surrounding the dispute in sufficient detail to apprise the other party of the nature of the complaint. The complaining party may, but will not be required to, aggregate the dispute with other disputes into one dispute notice.

B. Good Faith Negotiation. CDOT and the Owner shall attempt to settle all disputes. To this effect, CDOT and the Owner shall conduct at least one face-to-face meeting between their respective field representatives in which they shall consult and negotiate with each other, and, recognizing their mutual interests, attempt to reach a solution satisfactory to both CDOT and the Owner. Such meeting shall take place within seven Days following delivery of a dispute notice. If that meeting does not resolve the dispute, CDOT and the Owner shall conduct at least one face-to-face meeting between their respective staff representatives in which they shall consult and negotiate with each other, and, recognizing their mutual interests, attempt to reach a solution satisfactory to both CDOT and the Owner. This second meeting, if needed, shall take place within 14 Days following delivery of a dispute notice. Compliance with the dispute notice and negotiation provisions hereof shall be a condition precedent to the filing of any action involving a dispute.

C. Legal Remedies. If CDOT and the Owner do not reach a resolution to their dispute within 14 Days following service of a dispute notice, then either party may pursue any remedies that may be available to it at law or in equity. In such case, this PSURA shall be construed in accordance with the laws of the State of Colorado. In the event of litigation, this Agreement shall be enforceable by the City of Colorado Springs. In the event of any dispute over the PSURA's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.; provided, however, that the venue for all federal disputes shall be in Denver, Colorado.

D. Continuing Performance. In the event of any dispute, CDOT and the Owner agree that they will continue their respective performance as required hereunder and such continuation of efforts shall not be construed as a waiver of any legal right or power of any party (a) under this PSURA or any Work Order or other agreement executed pursuant hereto, or (b) otherwise available pursuant to Applicable Law. CDOT and the Owner acknowledge and agree that delays in Utility Work will impact the public convenience, safety and welfare, and that (without limiting CDOT and the Owner remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, CDOT and the Owner shall be entitled to specific performance in the event of any breach of this PSURA which threatens to delay construction of the Project. However, the fact that specific performance may be granted shall not prejudice any claims for payment or otherwise related to performance of the Utility Work.

21. WORK ORDER PROCESS. Neither the Contractor nor the Owner shall proceed with its preparation of any Utility Relocation Plan and/or construction of the Relocation at any specific UDS location before a Work Order is executed and issued authorizing that Relocation. The Owner, the Contractor and then CDOT shall enter into a Work Order to define and order the preparation of the Utility Relocation Plan and/or the construction of the Relocation at that UDS location, and to describe all applicable terms and conditions for such Relocation, in accordance with the process described below.

A. Form. The Work Orders shall be in substantially the form attached hereto as "Exhibit C".

B. Contents/Amendment. The Work Order shall specifically identify the scope of work to be performed, the schedule for preparation of the Utility Relocation Plan and/or the construction of the Relocation and all other applicable terms and conditions for such Relocation. The Work Order shall include any applicable design details, cost estimates (when the Owner is preparing the Utility Relocation Plan and/or the construction of the Relocation), and any existing ROW/easement documents for the Relocation at the particular UDS location(s). The Work Order may also be used to otherwise amend the terms and conditions of this PSURA, upon inclusion of appropriate language describing such changes in the Work Order.

C. Negotiation and Execution. CDOT, the Owner and the Contractor shall promptly meet to resolve, through good faith negotiation, any comments or disagreements with respect to the contents of any Work Order. Upon negotiation and agreement as to the scope and the schedule of the Utility Relocation Plan and/or the construction of the Relocation, a Work Order shall be prepared by the Contractor. Each Work Order shall be signed by the Owner, the Contractor, then CDOT. No Work Order shall bind any party unless and until it executes that Work Order.

D. Submission/Response. The Contractor shall submit the final Work Order to the Utility Owner for approval. The Owner shall respond to all Work Orders within 14 Days after the Owner's receipt thereof, either by executing the same or by providing comments.

E. Standards. Preparation of the Utility Relocation Plan and/or the construction of the Relocation shall be governed by the then current written published standards, procedures, and terms set forth in this PSURA and in that Work Order which are uniformly applied by the Owner in its utility Relocations. All standards, procedures, terms and conditions set forth in this PSURA shall be deemed incorporated into each Work Order issued. Further, all terms and conditions that are applicable to such Utility Relocation Plan and/or the construction of the Relocation and that are not already included in this PSURA shall be specifically described and included in the Work Order. Failure to execute a Work Order does not excuse the performance of any other obligation by either party under this PSURA.

F. Effective Obligation. CDOT shall have no financial obligation to pay for any Utility Relocation Plan and/or construction of a Relocation described in a Work Order unless the Work Order expressly obligates CDOT to pay for such task(s). CDOT's financial obligation (if any) for the Utility Relocation Plan and/or the construction of the Relocation shall be limited by the amount of CDOT's obligation as expressly described in any executed Work Order issued for that Relocation, and any such obligation shall not be effective until the Work Order is fully executed by CDOT.

22. PSURA AMOUNT.

For Utility Work associated with the City of Colorado Springs and CDOT Fiber Optic Utilities, this PSURA is intended as an ordering document only and will not itself encumber funding for that Utility Work. The Contractor ~~under the separate DB Contract between CDOT and the Contractor will~~ shall perform that Utility Work authorized by this PSURA. All funds for ~~Fiber Optic~~City of Colorado Springs and CDOT fiber optic Utility Work ~~will be~~shall be encumbered under the DB Contract as part of the Guaranteed Maximum Price (GMP).

~~For the Fiber Optic Utilities, this PSURA total maximum amount of funds encumbered is $_____. The total cumulative amount for the Utility Relocation Plans and/or construction of the Relocations performed pursuant to Work Orders that are issued under this PSURA shall not exceed the total maximum amount, unless this PSURA is first amended in accordance with State Fiscal Rules to provide additional funds.~~

~~The Utility Work associated with Fiber Optic, excluding preparing the Utility Relocation Plan and performing the construction of the Relocation, authorized by this PSURA will actually be performed by the Contractor under the separate DB Contract between CDOT and the Contractor, and all funds for such Work will be encumbered under the DB Contract.~~

23. RESERVED

24. BETTERMENT. As determined by CDOT in its reasonable discretion and in consultation with the Owner, Betterment work at any specific location may be eligible to be done if: (a) that work is compatible with the Project Work; (b) that work would not interfere with the Project schedule; and (c) it is feasible to separate the Betterment from any related Utility Work being performed by the Contractor. If the Owner desires to include eligible Betterment work at any specific location where the Contractor is responsible to perform the Utility Work, the Owner shall negotiate the price (lump sum amount or estimated costs) for said Betterment work directly with the Contractor. The Owner shall provide a copy of the agreed-to lump sum amount or cost estimate for that Betterment to CDOT.

A. All such Betterment work shall be at the Owner's sole cost. In the event the Owner authorizes the Contractor to perform the desired Betterment work, the Owner, the Contractor and then CDOT shall execute a Work Order describing the terms and conditions applicable to such work. Upon execution of said Work Order, the Owner shall deposit the total negotiated price (lump sum amount or estimated costs) of said Betterment work with the CDOT Controller's office at CDOT Headquarters, 4201 East Arkansas Avenue, Denver, Colorado. CDOT will then add that Betterment work to the Project Contract with the Contractor, based on the terms and conditions described in the Work Order.

B. Where a lump sum amount for the Betterment work is not agreed to, the Contractor will perform the Betterment work on a time and materials basis in accordance with the provisions of the DB Contract, and the Owner shall pay CDOT the total cost actually incurred on that basis to perform the Betterment.

Where the Contractor will perform the Betterment work on an estimated time and materials basis, and the actual costs for that work exceed the estimated amount, the Owner shall pay CDOT for any actual costs that exceed that amount. CDOT will refund any remaining funds to the Owner if the actual costs for that work are less than the estimated amount deposited with CDOT by the Owner. Any such payment

or refund shall be made not later than 30 Days after receipt of an invoice together with supporting documentation.

~~C.~~ If the Contractor's offered price (lump sum or estimated costs) for the Owner's desired Betterment work is not Acceptable to the Owner, the Owner may reject that price and select a different contractor of its choice to perform the Betterment work or may perform the work themselves. Owner agrees that any such performance by a different contractor shall comply with the schedule of the Contractor's performance of the Project Work. The Owner, the Contractor and then CDOT shall execute a Work Order describing the terms and conditions applicable to such Betterment work.

~~D.~~C.~~1~~

25. SALVAGE. Materials from the Owner's existing Utilities that are recovered by the Contractor while performing the construction for a Relocation and which are not reused shall become the property of the Owner unless otherwise directed by the Project Manager. Materials can only be reused if approved by the Owner.

26. REAL PROPERTY INTERESTS.

A. If the Owner's Utilities are currently located on/in a real property interest (fee, easement) owned by the Owner, as evidenced by documentary proof of such interest provided by the Owner and Approved by CDOT, and if CDOT "takes" that interest for the Project, CDOT will do one of the following (in CDOT's sole discretion) to compensate the Owner for that taking:

(1) CDOT may pay just compensation to acquire that interest, but only if, Owner's utilities affected by such interest can be relocated; or

(2) When feasible, CDOT may acquire a replacement easement for the Relocation of the Owner's Utility and CDOT may condemn that replacement easement when it determines that is necessary. CDOT will attempt to purchase necessary utility easements. The Owner shall quitclaim to CDOT that portion of the easement that is replaced or extinguished; or

(3) If the Owner's Utility will be overtaken in-place and it need not be relocated, CDOT may execute a common-use agreement or a CDOT Utility Permit with the Owner which expressly recognizes that the Owner's existing real property interest shall continue to apply to the Utility after completion of Project construction; or

If CDOT does not pay just compensation or acquire a replacement interest for a relocated Utility or execute a common-use agreement for a Utility overtaken in place, as described above, CDOT and the Owner will comply with the provisions of § 43-1-1411(5), CRS.

B. The Owner shall not be required to abandon its Utility and vacate its property interest until the relocated Utility is fully operational in the new location.

C. For each Work Order, the Owner shall have the burden of proof to demonstrate that it has rights to an existing compensable real property interest, when applicable.

27. APPROVALS AND ACCEPTANCES. Any acceptance, approval, or any other like action required or permitted to be given by any party pursuant to this PSURA:

A. Must be in writing to be effective (except if deemed granted pursuant hereto);

B. Shall not be unreasonably withheld or delayed. If an approval or acceptance is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such approval or acceptance, and every effort shall be made to identify with as much detail as possible what changes are required for approval or acceptance; and

C. Except as provided in the subpart D of the "Dispute and Resolution" section herein, shall not be deemed granted if no response is provided to the party requesting an approval or acceptance within the time period prescribed by this PSURA or by a respective Work Order. The requesting party shall send out all requests for approval or acceptance to the other party in accordance with the "Representatives and Authority" section herein.

28. **OWNERSHIP, OPERATION, MAINTENANCE AND UTILITY PERMITS.** For Relocations performed by the Owner, all responsibilities for ownership, operations, maintenance and obtaining and complying with Utility Permits will remain with the Owner.

For Relocations performed by the Contractor:

A. The Owner shall remain the Owner of the Utility, upon completion of a Relocation and approval and acceptance of that Relocation in writing by the Owner.

B. Operation and maintenance of such Utility shall be the sole responsibility of the Owner.

C. Access by the Owner for maintenance and servicing of the Owner's Utilities that are relocated or overtaken in-place, within the Project ROW, will be allowed only pursuant to a local agency and/or a CDOT Utility Permit.

D. The Owner is responsible for obtaining all local agency Utility Permits and the CDOT Utility Permit. The Owner shall abide by all terms and conditions of all such Utility Permits that shall be issued after the Utility Relocation Plans are approved by the Owner or accepted by the Contractor, whichever is applicable. All terms and conditions in the CDOT Utility Permits that have already been issued for Owner Utilities currently located in existing CDOT ROW will continue to apply unless superceded by a subsequent CDOT Utility Permit issued for the Relocation. Also, where an Owner has Utilities located in existing CDOT ROW that will be used for the Project, without a current Permit with CDOT, the Owner shall apply for and obtain a CDOT Utility Permit. Where such Utilities need to be Relocated, the Owner must execute such CDOT Utility Permit. All such current and new CDOT Utility Permits are incorporated herein by this reference.

29. **STATE OF COLORADO "SPECIAL PROVISIONS" – EXHIBIT M.** If CDOT issues a Work Order for the Owner's preparation of a Utility Relocation Plan and/or the construction of the Relocation at any UDS location, and if that Work Order obligates CDOT to pay the Owner for any part of that performance, the State of Colorado "Special Provisions" (attached hereto as "Exhibit M") shall apply to that Relocation and shall be deemed incorporated into that Work Order as terms and conditions thereof by this reference. In that event, the Owner shall be considered "the Contractor" for the purpose of Exhibit M.

30. **REPRESENTATIVES AND AUTHORITY.**

A. Representatives. For the purpose of this PSURA, the individuals identified below are hereby-designated representatives of CDOT and the Owner. All notices required to be given by CDOT, the Contractor and the Owner hereunder may be e-mailed, or hand delivered, or by overnight delivery, or given by certified or registered mail to the individuals at the addresses set forth below. Notice given shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. Any e-mailed notice must also be promptly followed up by a hard copy. Either party may from time to time designate, in writing, new or substitute representatives.

For CDOT:

Name: ~~Lesley Mace~~David Watt
~~Title: CDOT Project Engineer~~
~~Address: 1480 Quail Lake Loop~~
~~Phone: 719-227-3249~~
~~Fax: 719-227-3298~~
~~E-mail: Lesley.Mace@state.co.us~~
Title: CDOT Resident Engineer
Address: 1480 Quail Lake Loop
Phone: 719-634-2323
Fax: 719-227-3298
E-mail: David.Watt@state.co.us

Name: Benjamin Lollar
Title: CDOT Region 2North Program Manager
Address: 1480 Quail Lake Loop
Phone: 719-634-2323
Fax: 719-227-3298
E-mail: Benjamin.Lollar@state.co.us
~~Name: David Watt~~
~~Title: CDOT Resident Engineer~~
~~Address: 1480 Quail Lake Loop~~
~~Phone: 719-227-3202~~
~~Fax: 719-227-3298~~
~~E-mail: **David.Watt@state.co.us**~~

For the Owner:

Name: Kathleen Krager
Title: Transportation Manager
Address: P.O. Box 1575 MC 460
Colorado Springs, CO 80901-1575
Phone: 719-385-7628
Fax: 719-385-5388
E-mail: kkrager@springsgov.com

B. Authority. With respect to the representative of CDOT, such individual shall have the authority to sign/Approve Work Orders and other amendments for CDOT, to inspect and reject services, Approve invoices for payment, and to act otherwise for CDOT.

With respect to the representative of the Owner, the Owner has designated the following representative, who has the authority, to sign/approve Work Orders and other amendments for the Owner, to inspect and reject services, approve invoices for payment, and to act otherwise for the Owner.

For the Owner:

Name: Kathleen Krager
Title: Transportation Manager
Address: P.O.Box 1575 MC 460
Colorado Springs, CO 80901-1575
Phone: 719-385-7628

Fax: 719-385-5388
E-mail: kkrager@springsgov.com

Name: Rob Helt
Title: Principal Traffic Engineer
Address: 234 West Colorado Avenue
Colorado Springs, CO 80903
Phone: 719-385-7603
Fax: 719-385-7630
E-mail: rhelt@springsgov.com

If the Owner wishes to change the above stated representative(s) or to add representatives, the Owner shall do so in writing to CDOT.

31. INSURANCE.

The Owner shall obtain and maintain insurance in compliance with the CDOT Utility Permit (Exhibit J) requirements.

32. FEDERAL/STATE/LOCAL REQUIREMENTS. CDOT and the Owner shall at all times in the performance of the Utility Work strictly adhere to, and comply with, all applicable federal and state and local laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this PSURA. CDOT and the Owner shall also require compliance with these statutes and regulations in all subcontracts entered into under this PSURA. Where requested by CDOT, the Owner must obtain CDOT's Approval prior to the award of any subcontract by the Owner for the performance of any part of the Utility Work that will be paid by CDOT.

33. TERM. The term of this PSURA will commence upon its execution by the Owner, then by CDOT and will continue until:

A. All of the anticipated Relocations needed for the Project at the various UDS locations have been completed;

B. CDOT makes any final payment owed to the Owner (if any); and

C. The Owner repays CDOT for the Contractor's performance of any Utility Work for which the Owner is responsible for the cost.

The continuing records retention requirements shall extend beyond the term.

34. TERMINATION FOR CONVENIENCE. CDOT may terminate this PSURA at any time CDOT determines that the purposes of the distribution of State moneys under the PSURA would no longer be served by completion of the Utility Work. CDOT shall effect such termination by giving written notice of termination to the Owner and specifying the effective date thereof, at least 30 Days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Owner under this PSURA shall, at the option of CDOT, become its property, and the Owner shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered. If this PSURA is terminated for cause, or due to the fault of the Owner, the "termination for cause" or default provision shall apply.

35. TERMINATION FOR CAUSE. If through any cause the Owner shall fail to fulfill, in a timely and proper manner, its obligations under this PSURA, or if the Owner shall violate any of the covenants, agreements, or stipulations of this PSURA, CDOT shall thereupon have the right to terminate this PSURA for cause by giving written notice to the Owner of its intent to terminate and at least 30 Days opportunity to cure the default or show cause why termination is otherwise not appropriate. Any such termination shall be at CDOT's sole discretion and shall not limit any other available remedy. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Owner under this PSURA shall, at the option of CDOT, become its property, and the Owner shall be entitled to receive just and equitable compensation for any services and supplies delivered and Accepted. The Owner shall be obligated to return any payment advanced under the provisions of this PSURA.

Notwithstanding the above, the Owner shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of the PSURA by the Owner, and CDOT may withhold any payment to the Owner for the purposes of mitigating its damages until such time as the exact amount of damages due to CDOT from the Owner is determined.

If after such termination it is determined, for any reason, that the Owner was not in default, or that the Owner's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of CDOT and the Owner shall be the same as if the PSURA had been terminated for convenience, as described in Section 34.

36. LEGAL AUTHORITY. The Owner warrants that it possesses the legal authority to enter into this PSURA and that it has taken all actions required by its procedures, by-laws, and/or Applicable Laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this PSURA and to bind the Owner to its terms. The person(s) executing this PSURA on behalf of the Owner warrant(s) that such person(s) have full authorization to execute this PSURA.

37. THIRD PARTY BENEFICIARY. The Contractor is an express, intended third-party beneficiary to this PSURA. Except for the Contractor, there are no third-party beneficiaries to this PSURA.

38. AVAILABILE FUNDS ASSURANCE. This PSURA, and any Work Order(s) issued hereunder, is subject to and contingent upon the continuing availability of Federal and CDOT funds allocated for the purposes hereof. Consistent with Section 24-91-103.6 (2), C.R.S., CDOT states as follows: (1) the amount of money appropriated, budgeted, and available for preparing the Utility Relocation Plan and/or construction of the Relocation at a particular UDS location for which CDOT bears the cost responsibility therefore, and which is authorized by Work Order issued by CDOT to the Owner for its performance of that Utility Work, is equal to or in excess of the Work Order amount, and; (2) CDOT will not issue any Change Order or other form of order or directive to the Owner requiring its performance of additional compensable Utility Work, which Utility Work causes the aggregate amount payable under any such Work Order to exceed the amount appropriated and available for the original Work Order, unless CDOT first budgets and encumbers funds to cover the costs of the additional Utility Work or unless such Utility Work is covered by a remedy-granting provision in the DB Contract.

39. SERVICE CONTINUITY.

A. The Contractor shall at all times comply with the requirements of §§ 43-1-1402 through 43-1-1412, CRS, concerning taking appropriate measures to ensure service continuity of Owner's Utilities Relocated for the Project. Where the Contractor is responsible for the performance of construction for a Relocation, in order to maintain the service continuity of the Owner's Utilities to the extent practicable during that performance, the Contractor shall:

(1) Keep the Owner fully informed of schedules, including coordinating with the Owner with regard to their Utility Relocation Plan and construction of the Relocation and inspection of the Relocation performed by the Contractor;

(2) Keep the Owner fully informed of changes which affect their Utilities;

(3) Keep the Owner involved in making the decisions that affect their Utilities such that: (a) the Owner is able to provide uninterrupted service to its customers, or (b) so long as the decision does not affect any of Owner's Utilities critical to providing service to Owner's customers, Owner's customers are subject to the least interruption practicable; and

(4) Comply with any additional, reasonable service continuity conditions described in the Work Order(s) issued for the Relocation.

B. Any shutdowns and/or temporary diversions of the Owner's Utilities proposed by the Contractor shall be included in a Work Order, which is subject to the Owner's approval. All of the Owner's Utilities shall remain fully operational during all phases of Project construction, except as specifically allowed and approved by the Owner.

C. Except where due to Force Majeure, the Contractor shall reimburse the Owner for the actual documented costs and damages incurred by the Owner arising out of any unapproved interruption in the Owner's Utility service resulting from the Contractor's performance of the Work.

40. DAMAGE TO UTILITIES AND OTHER PROPERTY.

The Contractor and the Owner shall require their contractors, employees and agents to exercise due precaution and care to avoid causing damage to the Utilities and property of the other party and shall immediately report to the other party the occurrence of any such damage. Such damage shall be repaired or compensated at the expense of the party that caused the damage, to the reasonable satisfaction of the other party. Each Party shall be responsible for any damage caused by their respective operations to adjacent property, adjacent Utilities, adjacent structures, persons, and other real property. Said operations include, without limitation, any earthwork, hauling, equipment placement, material placement, or the performance of any other activity on the Project.

41. INDEMNIFICATION.

By the Contractor: CDOT will include language in its DB Contract to require that the Contractor for the Project shall, to the extent authorized by law, indemnify, save, and hold harmless the Owner, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees, pursuant to the terms of this agreement or any Work Order executed pursuant hereto.

42. ADDENDUM.

Before this PSURA is executed, the parties may agree to additions or other changes in the terms hereof in order to address the particular needs or requirements of the Owner. Any such changes (if any) shall be described in an "Addendum", which shall be attached and incorporated into this PSURA by this reference. In the event of a conflict or inconsistency between any such "Addendum" and this PSURA proper, or its incorporated material, and/or its exhibits or attachments, the "Addendum" shall prevail to the extent of any such conflict or inconsistency.

43. WAIVER~~aiver~~.

The failure of either party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants or agreements herein contained, or the failure of either party in any one or more instances to exercise any option, privilege or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants or agreements, and no forbearance by either party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

44. E-MAIL~~mail~~.~~`~~

Except in the case of Notice as provided above, e-mail and all other electronic (including voice) communications from Owner in connection with this PSURA are for informational purposes only. No such communication is intended by Owner to constitute either an electronic record or an electronic signature or to constitute any agreement by Owner to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

45. COUNTERPARTS.

This PSURA may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Facsimile copies of signatures shall be permitted for purposes of the binding nature of this PSURA.

46. HEADINGS.

The titles or captions of the provisions of this PSURA are merely for convenience of reference, and are not representations of matters included or excluded from such provisions

47. EXHIBITS.

A. Utility Tracking Report

B. Utility Design Sheet (UDS)

C. Work Orders (Public and Private)

D. Owners Recent Contractors and Consultants List

E. Utility Work Procedure Flow Charts (Public and Private)

F. Construction Inspection Acceptance Letters (Owner and Contractor)

G. Utility Owner Reimbursement Invoice Form (between CDOT and Utility Owner only)
H. RESERVED
I. Utility Relocation Plan Acceptance Letters (Owner and Contractor)
J. CDOT Utility Permit
K. PSURA Definitions
L. Utility No-Conflict Closeout Form
M. State of Colorado Special Provisions

In witness whereof, Owner and CDOT have executed this PSURA.

FOR OWNER:	COLORADO DEPARTMENT OF TRANSPORTATION:
By:	By:
Name:	Josh Laipply, Chief Engineer
Title:	
Date:	Date:

Approved as to legal form for Owner:	Approved as to legal form for CDOT:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: