

SCHEDULE 22**UTILITIES AND ACCESS****Part 1****Utility Relocations****1. Utility Relocations**

This Part describes how the risk of increased costs and delays associated with the Utility Work is allocated between HPTE and the Concessionaire through the process described in Schedule 21, and contains certain additional terms relating to Utility Work to supplement those in Technical Utility Requirements. The Concessionaire agrees that: (i) the Phase 2 Work includes all of the Utility Work to be furnished or performed by the Concessionaire described in the Technical Utility Requirements and in this Part; and (ii) it is feasible to obtain and/or perform all necessary Utility Work within the time deadlines of the Contract. Accordingly, the Concessionaire shall be entitled to an approved Change (as defined in Schedule 21) for additional delays associated with the Utility Work only as permitted by this Part, or in circumstances for which such a Change is otherwise permitted under the Contract.

2. Accuracy of Design and Data**2.1 "Reasonable Accuracy" Defined**

For purposes of this paragraph 2 of this Part, a Utility shall be deemed indicated with reasonable accuracy if both of the following criteria are met:

- (a) The Utility's actual centerline location is within 10 feet of the horizontal centerline location indicated in the Utility Data (with no limitation on vertical location); and
- (b) The Utility's actual size is within 12 inches of the size indicated in the Utility Data.

2.2 Inaccuracy Increasing the Phase 2 Work

In general, if any existing Utility (or any portion of such Utility) identified in the Utility Data is not indicated with Reasonable Accuracy therein, or is not indicated at all, then HPTE shall be responsible for, and agrees to issue an HPTE Change Notice relating to a Construction Change (as defined in Schedule 21), and the provisions of Part 6 of Schedule 21 shall apply; provided, however, no extension of the Planned Full Services Commencement Date will be allowed on account of such lacking or inaccurate information. Notwithstanding the foregoing, if any one or more of the following applies with respect to any Utility (or any portion thereof):

- (a) A surface inspection of the area would have shown the existence or the likelihood of existence of such Utility (or portion thereof) in the correct location and/or size, as applicable, by reason of above-ground facilities such as buildings, meters or junction boxes or identifying markers; or
- (b) Such Utility is a Service Line (or the portions of a Utility that are Service Lines); or
- (c) Any costs or delays associated with the performance of Incidental Utility Work by the Concessionaire;

then any Change derived from any of these three items shall be a Concessionaire Change and governed by Part 5 of Schedule 21.

2.3 Inaccuracy Decreasing the Work

If any existing Utility (or any portion of such Utility) identified in the Utility Data is not indicated with “reasonable accuracy” therein, then HPTE shall have the right to provide an HPTE Change Notice relating to a Construction Change to reflect the value of any reduction in the costs of the Utility Work to be furnished or performed by the Concessionaire which is directly attributable to the correction of such information. The amount of any such Change shall be determined in accordance with Part 6 of Schedule 21.

2.4 Inconsistency within Utility Data

If there is any inconsistency within the Utility Data cited in paragraph 2.2 of this Part, and paragraph 2.3 of this Part, the most accurate of the indications will be used for purposes of paragraph 2.1 of this Part.

2.5 Partial Inaccuracy

If only a portion of an existing Utility identified in the Utility Data Reference Documents is not indicated with “reasonable accuracy” therein, or is not indicated at all, then HPTE shall issue an HPTE Change Notice relating to a Construction Change pursuant to Part 6 of Schedule 21, only for the resulting increased or decreased costs (respectively) of the Utility Work incurred by the Concessionaire with respect to that portion of such Utility.

3. Betterments and Requested Relocations

16.1 Utility Betterments and Requested Relocations may be added to the Work pursuant to this Part, paragraph 3.

3.1 Any Utility Owners may request HPTE to permit the Concessionaire to perform work relating to Betterments or Requested Relocations as a part of the Work, at the Utility Owner’s expense. If HPTE approves any such request, the Concessionaire will have the obligation to perform such work, with the right to receive additional payment pursuant to Part 6 of Schedule 21 and, if applicable, an extension of the Planned Full Services Commencement Date. The price charged by the Concessionaire for such Betterment or Requested Relocation shall be subject to the requirements of Part 6 of Schedule 21.

3.2 HPTE will approve the addition of a Betterment or Requested Relocation to the scope of the Work under this paragraph 3 of this Part only if: (i) the Utility Owner has agreed to the addition of such Betterment or Requested Relocation to the Work; (ii) such Betterment is compatible with the Project; (iii) the Utility Owner has agreed to reimburse the Concessionaire for all the costs thereof; (iv) the Utility Owner has agreed as to the method (negotiated lump sum amount, or time and materials cost basis) of pricing such Work; and (v) it is feasible to separate the cost/pricing of the Betterment or Requested Relocation work from that for any related Utility Work being furnished or performed by the Concessionaire. The Concessionaire shall provide HPTE with such information, analyses and certificates as may be requested by HPTE in connection with its approval.

3.3 Any change in the scope of the Work pursuant to this paragraph 3 of this Schedule shall not be considered an HPTE Change Notice relating to a Construction Change pursuant to Part 6 of Schedule 21.

4. Utility Delays

4.1 Allocation of Risk

If aggregate Utility Delays caused by an individual Utility Owner exceed 5 days, and the Full Services Commencement Date is affected thereby, that shall be a Relief Event if the conditions for it to be a Relief Event set out in paragraph 4.2 are fulfilled.

4.2 Conditions for Utility Delays to be Relief Events

- (a) With respect to each Utility Delay claimed by the Concessionaire, the Concessionaire shall not be entitled to any extension of the Full Services Commencement Date unless all of the following conditions are satisfied:
 - (i) The Concessionaire has provided evidence reasonably satisfactory to HPTE that:
 - (ii) The Concessionaire has fulfilled its obligation under the applicable Utility Relocation Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays; and
 - (iii) The Concessionaire has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.
- (b) If the Concessionaire is responsible for the Relocation, the Concessionaire has provided a reasonable Relocation plan to the Utility Owner and the Concessionaire has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by or with any Governmental Person in order to design and construct such Relocations.
- (c) No circumstances exist which have delayed or are delaying the affected Relocation, other than those which fit within the definition of a Utility Delay.

4.3 Compensation

The Concessionaire shall be entitled to compensation in relation to Utility Delays if and to the extent that such compensation is recoverable from the Utility Owner by HPTE or CDOT under the Utility Relocation Agreement.

5. Certain Obligations of Concessionaire

5.1 Multiple Relocations of the Same Utility

The Concessionaire shall avoid multiple relocations of the same Utility, whether by the Utility Owner or by the Concessionaire. Accordingly, after a Utility has been relocated once in order to accommodate the Project based on the Concessionaire's design, the Concessionaire shall be responsible for all costs incurred by either the Concessionaire or the Utility Owner in order to subsequently relocate such Utility to accommodate the Project. If the Utility Owner performs such subsequent Relocation, then the Concessionaire shall reimburse the Utility Owner for such subsequent relocation. If the Concessionaire performs such subsequent Relocation, then the Concessionaire shall not be entitled to an HPTE Change Notice relating to a Construction Change on account of the performance of such subsequent Relocation.

5.2 Minimizing HPTE's Reimbursement Obligation

In designing and constructing the Project, the Concessionaire shall take all reasonable steps to minimize costs to the Utility Owners under the Utility Relocation Agreements, to the extent practicable and otherwise consistent with other requirements of the Contract Documents.

6. Additional Restrictions on Change Orders

In addition to all of the other requirements and limitations contained in paragraph 6, the entitlement of the Concessionaire to any HPTE Change Notice relating to a Construction

Change under this paragraph 6 of this Part shall be subject to the restrictions and limitations in this paragraph 6 of this Part.

6.1 Burden of Proof

For Relocations, the Concessionaire shall bear the burden of proving that the Relocation cannot reasonably be avoided.

6.2 Coordination Costs

The Concessionaire shall not be entitled to any funds from HPTE for any costs of coordinating with Utility Owners or for assisting HPTE in coordinating with Utility Owners.

6.3 Voluntary Action by Concessionaire

If the Concessionaire elects to make payments to Utility Owners or to undertake any other efforts which are not required by the terms of the Contract Documents, the Concessionaire shall not be entitled to an HPTE Change Notice relating to a Construction Change in connection therewith. Regardless, the Concessionaire shall promptly notify HPTE of the terms of any such arrangements.

SCHEDULE 22

Part 2

Access Permits

1. **Concessionaire to become member of Notification Association**

1.1 The Concessionaire shall become a member of the notification association (as defined in Colorado Revised Statutes Article 9-1.5) for the geographical area of the Managed Lanes.

2. **Operation of the permitting procedure**

2.1 HPTE will ensure that in the operation of its procedure for issuing Access Permits in relation to the Managed Lanes CDOT will act in accordance with this Part.

2.2 CDOT will promptly notify the Concessionaire of any application for an Access Permit that it receives and provide a copy of the application and all supporting documentation and will consult with the Concessionaire in relation to the issue of the Access Permit

2.3 CDOT will impose a special condition on the Access Permit in substantially the following terms:

Permittee shall coordinate with the US36 and I-25 Managed Lanes Concessionaire for work that encroaches on the highway managed lanes, and traffic control plans are to be reviewed and accepted by the Concessionaire before construction.

Permittee shall coordinate with the following Concessionaire representative:

Name

Address

Phone

Any indemnification requirement contained in the permit's standard or other special provisions shall be amended to read as follows:

To the extent authorized by law, Permittee hereby assumes, releases, and agrees to indemnify, defend, protect, and save the State of Colorado and Plenary Roads Denver LLC from and against any loss and/or damages to the property of the State of Colorado, Plenary Roads Denver LLC, third parties or the Permittee's facilities, and all loss and/or damage on account of injury to or death of any person whomsoever, arising at any time, caused by or growing out of the occupation of Colorado State Highway rights of way by Permittee's facilities or any part thereof, including but not limited to installation, adjustment, relocation, maintenance or operation, or removal of existing facilities, unless such loss and/or damage arises from the sole negligence of willful conduct of the State of Colorado, Plenary Roads Denver LLC or their employees or agents.

Permittee shall also name Plenary Roads Denver LLC as an additional insured on their Commercial General Liability, Auto Liability, Pollution Legal Liability and Umbrella or Excess Liability insurance policies in addition to naming CDOT as an additional insured as required by Standard Term 3.H.

- 2.4 CDOT will follow the Concessionaire's reasonable requirements, including scheduling, in relation to any other special condition to be included in the Access Permit.
- 2.5 To avoid doubt, it shall be for the Concessionaire, and not for HPTE or CDOT, to verify to its satisfaction that any Person exercising a right of access pursuant to an Access Permit has complied with its obligation to have insurance cover as required by the special condition referred to in paragraph 2.3.