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RESOLUTION NO. 19- 215

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF EL PASO, STATE OF COLORADO

El Paso County, CO

  
219065615

**RESOLUTION TO APPROVE AN AMENDED INTERGOVERNMENTAL  
AGREEMENT BETWEEN CDOT AND EL PASO COUNTY TO ALLOW NON-  
EXCLUSIVE ACCESS TO STATE HIGHWAY 24 RIGHTS-OF-WAY TO  
INSTALL FIBER OPTIC CABLE IN CDOT CONDUIT IN EXCHANGE FOR  
FIBER OPTIC CABLE AND OTHER IN-KIND SERVICES**

WHEREAS, Article XIV, Section 18, of the Colorado Constitution, and C.R.S. § 29-1-201, *et seq.*, provide for, and encourage, political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibility by cooperating and contracting with each other; and

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1), 30-11-103 and 30-11-107(1), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board") has the legislative authority to make all contracts and to settle all accounts of the County and to exercise such other and further powers as are conferred by law; and

WHEREAS, pursuant to C.R.S. § 43-1-1201, *et seq.*, the Public-Private Initiatives Act grants authority for the Colorado Department of Transportation ("CDOT") to enter into agreements with public agencies to accomplish all or any part of work on a transportation system project whereby a public agency supplies resources to accomplish any type or aspect of a transportation system project in return for CDOT granting a right or interest in a transportation project as a public benefit; and

WHEREAS, CDOT and the County ("the Parties") desired to enter into an Intergovernmental Agreement (the "IGA") in which CDOT would provide non-exclusive access to the State Highway 24 – I-25 to Woodland Park Facility and an Indefeasible Right-to-Use (IRU) 1 CDOT micro duct conduit in the CDOT State Highway 24 Multipath Conduit; and the County would procure, provide and furnish to CDOT State Highway 24 fiber optic cable solely at the County's expense, VMS Upgrade Kits, and will provide CDOT with access to existing County conduit within the City of Colorado Springs, all provisions as more fully detailed in the IGA; and

WHEREAS, the above-referenced IGA was approved by the Board of County Commissioners at Resolution No. 19-86 on March 21, 2019, and recorded in the records of the El Paso County Clerk and Recorder at Reception No. 219029237; and

WHEREAS, the Parties desire to amend paragraph 23 of the IGA adopted at Resolution No. 19-86 to ensure consistency with State Fiscal Rule 3-1 to clarify limitation of damages as therein stated; and

WHEREAS, the Board believes it will serve the public welfare and the citizens of El Paso County to amend the IGA and enter into the Amended Intergovernmental Agreement between CDOT and El Paso County to Allow Non-Exclusive Access to State Highway 24 Rights-of-Way to Install Fiber Optic Cable in CDOT Conduit in Exchange for Fiber Optic Cable and Other In- Kind Services, as attached hereto as Exhibit 1.

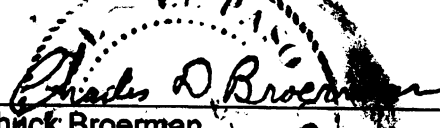
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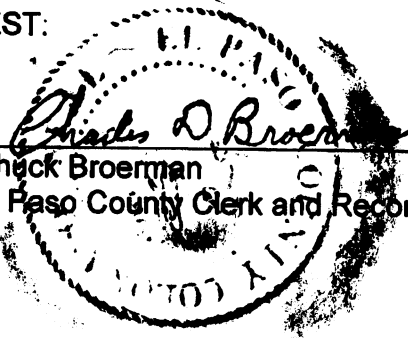
NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, Colorado, hereby authorizes and approves the Amended Intergovernmental Agreement between CDOT and El Paso County to Allow Non-Exclusive Access to State Highway 24 Rights-of-Way to Install Fiber Optic Cable in CDOT Conduit in Exchange for Fiber Optic Cable and Other In-Kind Services.

BE IT FURTHER RESOLVED, that Mark Waller, duly elected qualified member and Chair of the Board of County Commissioners, or Longinos Gonzalez, Jr., duly elected, qualified member and Vice Chair of the Board of County Commissioners be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

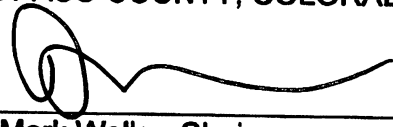
DONE THIS 11th day of June, 2019 at Colorado Springs, Colorado.

ATTEST:

By:   
Chuck Broerman  
El Paso County Clerk and Recorder



BOARD OF COUNTY COMMISSIONERS  
EL PASO COUNTY, COLORADO

By:   
Mark Waller, Chair

**Intergovernmental Agreement between CDOT and El Paso County to  
Allow Non-Exclusive Access to State Highway 24 Rights-of-Way to  
Install Fiber Optic Cable in CDOT Conduit in Exchange for  
Fiber Optic Cable and Other In-Kind Services**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "CDOT", and EL PASO COUNTY, hereinafter referred to as the "County". CDOT and the County also may be hereinafter referred to individually as "Party" or jointly as the "Parties".

This Agreement shall not be enforceable until the date on which this Agreement has been approved and signed by all Parties and the Colorado State Controller or designee (the date of the signature of the Colorado State Controller or designee being the "Effective Date").

**I. FACTUAL RECITALS**

1. State highways are affected by many critical transportation problems including: reoccurring and increasing congestion, incidents, venues and activity centers, major construction, and daily construction and maintenance activities. Installation of CDOT-owned fiber optic facilities on State highways allows implementation of Intelligent Transportation System applications that provide system managers with timely information on current conditions and better tools for controlling flow and managing construction, incidents, and events. Dissemination of travel times to the traveling public will allow travelers to make better informed decisions regarding their travel choices. In addition, CDOT-owned fiber optic facilities can be used to link other State government institutions and facilities, which will enhance public welfare and safety, increase the State's efficiency and make the State more attractive and competitive in the global market.

2. The Public-Private Initiatives Act (the "Act"), CRS 43-1-1201, et seq., grants authority to CDOT to enter into an agreement with a public agency to accomplish all or any part of the work on a transportation system project whereby a public agency supplies resources to accomplish on any type or aspect of a transportation system project, as a public contribution, in return for CDOT granting a right or interest in or concerning a transportation system project, as a public benefit.

3. The Act, C.R.S. 43-1-1203, further grants authority to CDOT to receive, evaluate and accept unsolicited proposals for a public-public initiative for qualifying transportation facilities from public agencies provided that the unsolicited proposal receives a favorable evaluation and CDOT makes a written determination based on the facts and circumstances that the unsolicited proposal is an acceptable basis for an agreement to obtain services either without competition or after actions are taken if CDOT must consider comparable proposals.

4. The Transportation Commission of Colorado adopted Resolution TC-16-11-3 to corroborate that CDOT may consider unsolicited proposals according to the Act, which includes that CDOT must only consider comparable proposals if said unsolicited proposal requires CDOT to spend public moneys in an amount

that is reasonably expected to exceed fifty thousand dollars (\$50,000.00) in the aggregate for any fiscal year including an unsolicited proposal for a public project as defined in C.R.S. 24-92-102(8) and in accordance with the provisions of C.R.S. 43-1-1203(6) thru (9), and provided that CDOT complies with CDOT Procedural Directive 1504.2 titled CDOT Public Private Partnerships for Fiber Optic Cable and Conduit, effective June 24, 2016 that provides guidance to all CDOT divisions, offices and regions regarding consideration for proposed public and private partnerships for new and existing fiber optic cable and conduit.

5. The County submitted to CDOT an unsolicited proposal dated October 22, 2018 (the "County Unsolicited Proposal") seeking non-exclusive access to the State Highway 24 corridor Rights-of-Way (ROW) from I-25 (mile point 303.8) to Sundial Drive in Woodland Park (mile point 287.2) (collectively the "SH 24 Corridor – I-25 to Woodland Park Facility") and an Indefeasible Right-to-Use ("IRU") one (1) CDOT micro duct conduit as determined solely by CDOT, and in exchange offering to provide CDOT: one hundred forty-four (144) strand single-mode fiber optic cable not less than one hundred-thousand (100K) feet in length (collectively the "CDOT SH 24 Fiber Optic Cable") and six (6) variable message signs ("VMS") upgrade kits to upgrade the northbound and southbound VMS located at Briargate, North Academy and Ft. Carson (collectively the "VMS Upgrade Kits") all of which is further described in paragraph 7 below in this same Section, in the County Unsolicited Proposal and within this Agreement.

6. CDOT evaluated the County Unsolicited Proposal in accordance with the provisions in the Act and determined in writing based on the facts and circumstances that the County Unsolicited Proposal is an acceptable basis for an agreement to obtain services that would not otherwise be readily available to CDOT, that such services provide good and commensurate value to CDOT and that CDOT will not spend public moneys in an amount that is reasonably expected to exceed fifty thousand dollars (\$50,000.00) in the aggregate for any fiscal year pertaining to the County Unsolicited Proposal, and therefore, CDOT has decided to accept the County Unsolicited Proposal based on those criteria and in accordance with state law and because the County Unsolicited Proposal is most advantageous to and in the best interest of CDOT.

7. The County Unsolicited Proposal identifies items that the County is seeking from CDOT and items that the County is offering CDOT pertaining to the SH 24 Corridor – I-25 to Woodland Park Facility in which CDOT intends to install: one (1) CDOT Multipath conduit containing three (3) micro duct conduits (collectively the "CDOT SH 24 Multipath Conduit"), one (1) CDOT two (2) inch conduit (the "CDOT SH 24 Two (2) Inch Conduit"), the CDOT SH 24 Fiber Optic Cable and pull boxes (the "CDOT SH 24 Pull Boxes"). The CDOT SH 24 Multipath Conduit, the CDOT SH 24 Two (2) Inch Conduit, the CDOT SH 24 Fiber Optic Cable and the CDOT SH 24 Pull Boxes shall be referred to as (collectively the "CDOT SH 24 Corridor Fiber Optic Infrastructure"). CDOT also intends to install one hundred forty-four (144) strand single-mode fiber optic cable not less than one hundred-thousand (100K) feet in length (collectively the "County SH 24 Fiber Optic Cable") and ten (10) County pull boxes (the "County SH 24 Pull Boxes") in the SH 24 Corridor – I-25 to Woodland Park Facility. The County SH 24 Fiber Optic Cable and the County SH 24 Pull Boxes shall be referred to as (collectively the "County SH 24 Corridor Fiber Optic Infrastructure"). The County SH 24 Corridor Fiber Optic Infrastructure is further described in this Agreement. The following describes more specifically items that the County is seeking from CDOT and items that the County is offering to CDOT:

County Seeking from CDOT

- a. Non-exclusive access to the SH 24 – I-25 to Woodland Park Facility and an IRU one (1) CDOT micro duct conduit as determined solely by CDOT (the “CDOT SH 24 Green Micro Duct Conduit”) in the CDOT SH 24 Multipath Conduit.

County Offering to CDOT

- b. Procure, provide and furnish the CDOT SH 24 Fiber Optic Cable solely at County expense. The CDOT SH 24 Fiber Optic Cable shall comply with the Sample ITS Specifications as referenced in Section II.3.b below (STATEMENT OF WORK).
- c. Procure, provide and furnish the VMS Upgrade Kits solely at County expense.
- d. Provide CDOT access to existing County conduit (the “County Conduit”) within the City of Colorado Springs as shown on the County Unsolicited Proposal, Figure 2 to over pull CDOT fiber optic cable.

8. CDOT desires to implement fiber optic facilities in high-priority corridors statewide such as the SH 24 Corridor – I-25 to Woodland Park Facility, which is identified as a redundant route for network connectivity and designated as a Connected Vehicle route, for the purpose of actively managing the corridors and providing real-time travel information to travelers in order to reduce delay and increase throughput, and to provide more reliable travel times, smoother flow, fewer crashes (both primary and secondary), and quicker response time for emergency service providers. CDOT believes allowing access to corridors for installation of public agency fiber optic cable benefits public agencies by providing improved and reliable communications.

9. CDOT and the County believe that both Parties will receive significant benefit from implementation of the provisions identified in the County Unsolicited Proposal and desire to enter into this Agreement pursuant to Section C.R.S. 43-1-1204, as amended, in order to cooperate and to jointly accomplish activities that will maximize limited public resources and provide enhanced benefit, functionality and economy of scale to each Party, and will accomplish the County Unsolicited Proposal in an effective and efficient manner.

10. For purposes of this Agreement the CDOT Region 2 Utility Permit and the CDOT Region 2 Maintenance Permit may be referred to as (collectively the “CDOT Region 2 Permits”).

11. CDOT and the County recognize, agree and desire to enter into this Agreement concerning the division of roles and responsibilities with respect to general agreed upon duties in order to accomplish the performance of work identified in Section II below (STATEMENT OF WORK).

12. This Agreement is executed by CDOT under the authority of Sections 29-1-203, 43-1-105, 43-1-110 and 43-1-1204 C.R.S., as amended, and by the County under the authority of the resolution attached hereto as **Exhibit A**.

NOW, THEREFORE, in consideration for the recitals and the mutual promises herein, the Parties agree as follows:

II. STATEMENT OF WORK

1. The "Work" shall consist of, but is not limited to, agreements concerning ownership of the CDOT SH 24 Corridor Fiber Optic Infrastructure, the County SH 24 Corridor Fiber Optic Infrastructure and other infrastructure identified in Section I.7 above (FACTUAL RECITALS) and in this Agreement, construction and installation processes and procedures, roles and responsibilities and maintenance responsibilities of each Party that are identified below in:

Section III. GENERAL PROVISIONS,

Section IV. OWNERSHIP OF THE CDOT SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE,

Section V. OWNERSHIP OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE,

Section VI. ROLES AND RESPONSIBILITIES OF THE COUNTY,

Section VII. ROLES AND RESPONSIBILITIES OF CDOT,

Section VIII. DISPOSITION OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE, and

Section IX. MAINTENANCE OF THE SH 24 CORRIDOR.

2. The County shall perform the Work and services, as applicable, in accordance with the terms and conditions of this Agreement and shall comply in its entirety with the following:

CDOT's 2017 version of Standard Specifications for Road and Bridge Construction, which are referenced hereto and incorporated herein, and which can be accessed at the following web site: <http://www.coloradodot.info/business/designsupport/construction-specifications>. Notwithstanding the foregoing, the Parties agree that Section 103 Award and Execution of Contract in CDOT's 2017 version of Standard Specifications for Road and Bridge Construction shall not apply to this Agreement.

3. The County shall perform the Work and services, as applicable, in accordance with the following exhibits, which are referenced hereto and incorporated herein:

- a. **Exhibit B** – the County Unsolicited Proposal, dated October 22, 2018 as identified in Section I.5 above (FACTUAL RECITALS).
- b. **Exhibit C** – Sample ITS Specifications, or as approved in the field by the CDOT Project Engineer. All sections labeled BASIS OF PAYMENT within the Sample ITS Specifications only apply insofar that the item identified under Pay Item is required.

4. The County shall obtain the CDOT Region 2 Utility Permit and the CDOT Region 2 Maintenance Permit, as applicable, in accordance with the terms and conditions of this Agreement prior to accessing the SH 24 – I-25 to Woodland Park Facility within the SH 24 ROW to perform or cause to be performed any construction or maintenance related activity on the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 – I-25 to Woodland Park Facility within the SH 24 ROW. The following identifies and explains the process by which the applicable permits can be obtained.

- a. The CDOT Region 2 Utility and Special Use Permit - Installation. This permit is required to perform any construction or installation activities and can be obtained at the following web site: <https://www.codot.gov/business/permits/utilitiesspecialuse/online-permit-application>. After accessing the web site:

- Click on Utility and Special Use Permits (Traffic Cone Icon).
- Click on Region 2 on the map.
- Enter email address to receive password.
- Enter password.
- Select Create New Application.
- Under Purpose of Permit, select Installation and complete permit.

This Permit shall be referred to in this Agreement as (the “CDOT Region 2 Utility Permit”).

- b. The CDOT Region 2 Utility and Special Use Permit - Maintenance. This permit is required to perform maintenance activities and can be obtained at the following web site: <https://www.codot.gov/business/permits/utilitiesspecialuse/online-permit-application>. After accessing the web site:

- Click on Utility and Special Use Permits (Traffic Cone Icon).
- Click on Region 2 on the map.
- Enter email address to receive password.
- Enter password.
- Select Create New Application.
- Under Purpose of Permit, select Maintenance of the Existing Facility and complete permit.

This Permit shall be referred to in this Agreement as (the “CDOT Region 2 Maintenance Permit”). It should be noted that the expiration date of the CDOT Region 2 Maintenance Permit will be the same date on which the County insurance or the County’s contractor’s insurance, as applicable,

which is required in accordance with Section XIV.12 below (Insurance Requirements), expires. Following issuance of the CDOT Region 2 Maintenance Permit the CDOT automated system will send notification to the County or to the County's contractor, as applicable, thirty (30) days prior to the expiration date of the CDOT Region 2 Maintenance Permit. It shall be the sole responsibility of the County or the County's contractor, as applicable, to ensure that the CDOT Region 2 Maintenance Permit is renewed by contacting CDOT Region 2 Utilities and providing a copy of updated/renewed County or contractor insurance.

5. County or the County's contractor, as applicable, shall comply with all provisions identified in Senate Bill 18-167, as applicable, if and to the extent that any of the Work required to the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW meets the definition of Subsurface Utility Engineering-Required Project as stated in Senate Bill 18-167.

### III. GENERAL PROVISIONS

1. This fully executed Agreement shall serve as the instrument of:

- a. The County's transfer of ownership to CDOT of the CDOT SH 24 Fiber Optic Cable and the VMS Upgrade Kits that the County procures, provides and furnishes shall be defined as acceptance by the CDOT Project Engineer, including all applicable manufacturer's warranties pertaining to the CDOT SH 24 Fiber Optic Cable and the VMS Upgrade Kits provided that such warranties are transferable. The County shall ensure that the CDOT SH 24 Fiber Optic Cable and the VMS Upgrade Kits that the County procures, provides and furnishes comply with the Sample ITS Specifications, as applicable, and is free and clear of any and all debt including, but not limited to, materials, labor installation cost and any and all other related cost (both the County and any and all contractors and sub-contractors hired by the County) and any and all other legal actions, claims, liens, etc. that might be levied against the CDOT SH 24 Fiber Optic Cable and the VMS Upgrade Kits. This signed Agreement, together with CDOT acceptance of the CDOT SH 24 Fiber Optic Cable and the VMS Upgrade Kits, shall serve as the County's grant of ownership of the CDOT SH 24 Fiber Optic Cable and the VMS Upgrade Kits to CDOT without any subsequent agreement necessary.
- b. CDOT's grant of the CDOT Region 2 Utility Permit to the County or to the County's contractor, as applicable, gives the County or the County's contractor, as applicable, the right to perform construction related activities on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility, and CDOT's grant of the CDOT Region 2 Maintenance Permit gives the County or the County's contractor, as applicable, the right to perform maintenance related activities on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility provided that the County or the County's contractor, as applicable, complies with all applicable provisions in this Agreement and the CDOT Region 2 Permits.

2. Following full execution of this Agreement, CDOT shall issue the CDOT Region 2 Permits, subject to applicable requirements, which shall also outline, if necessary, further installation instructions for field personnel. CDOT agrees to renew the CDOT Region 2 Permits, as applicable, and as often as necessary,



provided that all terms and conditions with respect to application for said CDOT Region 2 Permits as identified in Section II.4 above (STATEMENT OF WORK) and in Section VI below (ROLES AND RESPONSIBILITIES OF THE COUNTY) are completely satisfied, to ensure the CDOT Region 2 Permits are continuously in effect as applicable throughout the term of this Agreement.

3. CDOT prepared Sample ITS Specifications including, but not limited to, the CDOT SH 24 Fiber Optic Cable. Such Sample ITS Specifications are attached to this Agreement as further identified in **Exhibit C**.

4. The County recognizes and acknowledges that use of the CDOT SH 24 Green Micro Duct Conduit in the CDOT SH 24 Multipath Conduit within the SH 24 Corridor – I-25 to Woodland Park Facility will be used in accordance with the terms and conditions of this Agreement including that the County may make excess capacity or provide fiber strands in the County SH 24 Fiber Optic Cable to other State of Colorado governmental entities including counties, cities, and including institutions of higher education, ~~or~~ political subdivisions, or to private partners (each an “Entity”), provided the County execute an agreement with said Entity prior to the County making excess capacity or providing fiber strands in the County SH 24 Fiber Optic Cable whereby both the County and said Entity explicitly acknowledge, affirm and agree to the aforementioned terms and conditions in this same paragraph 4, and further provided that the County provide a copy of said executed agreement to the CDOT representative identified in Section XIII below (CONTACTS AND NOTICE ADDRESS) within fifteen (15) days of the execution date of said agreement. Furthermore, the County making excess capacity or providing fiber strands in the County SH 24 Fiber Optic Cable to any Entity shall not relieve the County from any and all of its responsibilities and obligations assumed by this Agreement, or from complete and proper fulfillment of the terms and conditions of this Agreement, neither does it require that CDOT treat any Entity as a party to this Agreement or entitle the County to any compensation for damages or loss from CDOT, in any manner whatsoever, for such loss due by the County making excess capacity or providing fiber strands in the County SH 24 Fiber Optic Cable to any Entity.

5. The County agrees to comply with CDOT’s 2017 version of Standard Specifications for Road and Bridge Construction as identified in Section II.2 above (STATEMENT OF WORK), where applicable, and as required for any construction activities performed or caused to be performed by the County within the SH 24 Corridor – I-25 to Woodland Park Facility.

6. CDOT’s grant to the County of non-exclusive access to the SH 24 – I-25 to Woodland Park Facility and CDOT’s grant of an IRU to the County with regard to the CDOT SH 24 Green Micro Duct Conduit in the CDOT SH 24 Multipath Conduit does not imply, either explicitly nor implicitly, or confer or convey any interest in real property, title, ownership or easement to the County regarding the SH 24 – I-25 to Woodland Park Facility or the CDOT SH 24 Corridor Fiber Optic Infrastructure, or regarding any other infrastructure that CDOT may install within the SH 24 – I-25 to Woodland Park Facility, or regarding the SH 24 ROW. The County also acknowledges that nothing in this Agreement limits, restricts, prohibits or prevents CDOT from entering into similar agreements with other third-parties for similar rights in the SH 24 – I-25 to Woodland Park Facility within the same SH 24 ROW.

7. The County agrees to deliver, solely at the County's expense and without seeking reimbursement from CDOT in any manner whatsoever, the CDOT SH 24 Fiber Optic Cable, the VMS Upgrade Kits, the County SH 24 Fiber Optic Cable and the County SH 24 Pull Boxes to a location or locations as designated by CDOT representative identified in Section XIII below (CONTACTS AND NOTICE ADDRESS) not to exceed the period specified following full execution of this Agreement as follows:

- a. The County Pull Boxes shall be delivered within a period not to exceed sixty (60) days following full execution of this Agreement.
- b. The CDOT SH 24 Fiber Optic Cable and the County SH 24 Fiber Optic Cable shall be delivered by no later than May 30, 2019.
- c. The VMS Upgrade Kits shall be delivered within a period not to exceed one hundred eighty (180) days following full execution of this Agreement.

The Parties recognize that the County must follow its purchasing requirements which could extend the delivery date by up to ninety (90) days. The County agrees to fast track the purchasing process to expedite delivery of the same materials specified in this paragraph 7. The County will deliver the same materials specified in this paragraph 7 to CDOT as soon as they are received, and the County agrees to work as diligently as possible to meet the delivery timeframes identified in this paragraph 7. The Parties understand that delivery delays from the suppliers, which are no fault of the County, will not be considered Default. CDOT agrees to support the County's purchasing process by sharing specifications that are provided in **Exhibit C**, and reviewing and approving bidder's submittals. Notwithstanding the aforementioned, failure by the County to comply with this paragraph 7 shall place the County in Default as identified in Section XiV.3 below (Default) and CDOT may initiate Termination for Cause as identified in Section XIV.1 below (Termination for Cause).

#### IV. OWNERSHIP OF THE CDOT SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE

1. CDOT owns the following infrastructure:

- a. The CDOT SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW.
- b. The VMS Upgrade Kits.
- c. All existing or future infrastructure procured and/or installed by CDOT in the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW including, but not limited to, Closed Circuit Television Cameras, Toll-Tag Indicators, Radar Units, etc.

#### V. OWNERSHIP OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE

1. The County owns the following infrastructure:

- a. The County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW.
- b. All future infrastructure procured and/or installed by the County in the SH 24 Corridor – I-25 to Woodland Park Facility including, but not limited to, splice canisters, cabling, connectors and ancillary equipment and lateral conduit and fiber optic cable.
- c. The County Conduit.

2. The County shall not own any real property, title, ownership or easement to the SH 24 – I-25 to Woodland Park Facility or the CDOT SH 24 Corridor Fiber Optic Infrastructure, or any other infrastructure that CDOT may install within the SH 24 – I-25 to Woodland Park Facility, or the SH 24 ROW.

#### **VI. ROLES AND RESPONSIBILITIES OF THE COUNTY**

With respect to the Work and related activities identified in this Agreement, the County shall perform and be responsible for the following functions:

1. Manage and administer the Work, records, the County billings and payments, and all related activities, as applicable, to ensure that all applicable federal and state statutes, regulations, standards, plans, specifications and procedures are satisfied.
2. Prepare and provide plans to CDOT in hard copy and appropriate electronic format as required by CDOT for review, comment and approval that shows, but not limited to, proposed locations for the County SH 24 Pull Boxes and the preferred length of the County SH 24 Fiber Optic Cable to be coiled in each of the County SH 24 Pull Boxes within the SH 24 Corridor – I-25 to Woodland Park Facility. These plans shall be referred to as (the “County SH 24 Corridor Fiber Optic Infrastructure Project Plans”).
3. Prepare and provide plans to CDOT in hard copy and appropriate electronic format as required by CDOT for review, comment and approval prior to performance of any construction related activity on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility. The County shall also provide as-constructed plans showing any changes or deviations required from the plans within sixty (60) days following CDOT’s final acceptance of the Work by the CDOT Project Engineer. As-Constructed Plans shall be provided in the same electronic format as the plans and in SHP file format.
4. Prior to perform or cause to be performed any construction related activity on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility, apply for and obtain the CDOT Region 2 Utility Permit, which authorizes the construction related activity, and comply with all applicable provisions, terms and conditions of the CDOT Region 2 Utility Permit and apply for and obtain any and all other federal, state and/or local permits that may be necessary. The CDOT Region 2 Utility Permit addresses, but is not limited to, the following requirements: insurance during construction, traffic control, worker safety, general construction provisions, environmental provisions, facility relocation procedures, maintenance roles and responsibilities, access to the facility, etc.

5. Prior to perform or cause to be performed any maintenance related activity on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility, apply for and obtain the CDOT Region 2 Maintenance Permit and comply with all applicable provisions, terms and conditions of the CDOT Region 2 Maintenance Permit in order to perform maintenance related activities on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility. The CDOT Region 2 Maintenance Permit must be applied for and obtained as described in Section II.4.b above (STATEMENT OF WORK) throughout the entire term of this Agreement.
6. Apply for and obtain all other federal, state and/or local permits that may be necessary to perform any construction related activity on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility as a condition, if applicable, of obtaining the CDOT Region 2 Utility Permit. It shall be the sole responsibility of the County to pay for all associated fees and costs of such permits and comply with the terms and conditions of such permits.
7. Perform or cause to be performed all construction related activities in accordance with CDOT's 2017 version of Standard Specifications for Road and Bridge Construction and Sample ITS Specifications, as applicable, plans, project schedules and permit requirements to the extent required under this Agreement.
8. Grant CDOT IRU the County Conduit within the City of Colorado Springs as shown on **Exhibit B**, Figure 2 to over pull CDOT fiber optic cable in the County Conduit. The IRU shall be imputed upon execution of this Agreement without further action being necessary and shall have the same duration as identified in Section X below (TERM OF AGREEMENT).
9. Comply with Section III.7 above (GENERAL PROVISIONS) to deliver, solely at the County's expense and without seeking reimbursement from CDOT in any manner whatsoever, the CDOT SH 24 Fiber Optic Cable, the VMS Upgrade Kits, the County SH 24 Fiber Optic Cable and the County SH 24 Pull Boxes to a location or locations as designated by CDOT representative identified in Section XIII below (CONTACTS AND NOTICE ADDRESS) within the time period specified.
10. Comply with Section III.4 above (GENERAL PROVISIONS) regarding the County making excess capacity or providing fiber strands in the County SH 24 Fiber Optic Cable.
11. Notwithstanding anything to the contrary in Section XIV.10 below (Assignment), including but not limited to the exhibits, the County may utilize sub-contractors to perform any or all of its obligations under this Agreement without obtaining the prior written consent or approval of CDOT, provided that said sub-contractors comply with all provisions of this Agreement, the CDOT Region 2 Utility Permit, and the CDOT Region 2 Maintenance Permit.
12. Perform or cause to be performed, as applicable, any and all construction related activities within the SH 24 Corridor – I-25 to Woodland Park Facility so as not to cause damage to the CDOT SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility. The County or the County's contractor, as applicable, shall be responsible to remedy damage(s) to the CDOT SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility caused as a direct

result of improper or careless performance of construction related activities within the SH 24 Corridor – I-25 to Woodland Park Facility. Failure by the County or the County’s contractor, as applicable, to correct damages to the CDOT SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility may result in CDOT ceasing all other Work and related activities including, but not limited to, CDOT exercising all other provisions within this Agreement to remedy said damages, until such time as any damages are corrected to CDOT’s satisfaction.

13. Perform or cause to be performed including, but not limited to, all maintenance related activities on the County SH 24 Corridor Fiber Optic Infrastructure and other infrastructure installed by the County in the SH 24 Corridor – I-25 to Woodland Park Facility including, but not limited to, splice canisters, cabling, connectors and ancillary equipment and lateral conduit and fiber optic cable as described in Section IX below (MAINTENANCE OF THE SH 24 CORRIDOR) solely at the County’s expense without seeking reimbursement from CDOT, in any manner whatsoever, for the entire duration of this Agreement as identified in Section X below (TERM OF AGREEMENT).

14. Not impede, restrict or limit in any manner whatsoever CDOT performance of construction or repairs on the CDOT SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility (which shall be performed by CDOT or CDOT contractors at CDOT’s sole cost and expense) in accordance with CDOT’s immediate business need, in CDOT’s sole discretion, to perform or cause to be performed such construction or repairs on the CDOT SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility including, but not limited to, type of construction or repair, date and time to perform the construction or repair and time required to perform the construction or repair all of which shall be determined solely based on CDOT’s discretion upon prior written notification provided to the County that shall be acceptable in the form of an email with an electronic receipt.

15. Comply with all provisions identified in Senate Bill 18-167, as applicable, if and to the extent that any of the Work required to the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW meets the definition of Subsurface Utility Engineering-Required Project as stated in Senate Bill 18-167.

## VII. ROLES AND RESPONSIBILITIES OF CDOT

With respect to Work and related activities identified in this Agreement, CDOT shall perform and be responsible for the following functions:

1. Prepare and provide Sample ITS Specifications identified in Section II.3.b above (STATEMENT OF WORK) in electronic format to the County so that such Sample ITS Specifications can be used with respect to the CDOT SH 24 Fiber Optic Cable.
2. Provide technical support, advice and assistance to the County regarding applying for and obtaining the CDOT Region 2 Permits, as applicable, regarding performance of any construction or maintenance related activity on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility.

3. Issue the CDOT Region 2 Utility Permit within forty-five (45) days of receiving the County's properly completed application including all other required federal, state and/or local permits provided that no mitigating circumstances, requirements, clearances or other issues must be addressed thereby making issuance of said CDOT Region 2 Utility Permit not possible within forty-five (45) days.

4. Issue the CDOT Region 2 Maintenance Permit within fifteen (15) days of receiving the County's properly completed application provided that no mitigating circumstances or other issues must be addressed thereby making issuance of said CDOT Region 2 Maintenance Permit not possible within fifteen (15) days.

5. Waive any and all associated fees and costs regarding the CDOT Region 2 Permits, as applicable, for the entire duration of this Agreement as identified in Section X below (TERM OF AGREEMENT).

6. Review the County SH 24 Corridor Fiber Optic Infrastructure Project Plans and provide approval or comments within fifteen (15) business days after receipt of the County SH 24 Corridor Fiber Optic Infrastructure Project Plans.

7. Review plans of any construction related activity on the County SH 24 Corridor Fiber Optic Infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility within fifteen (15) business days after receipt of the plans.

8. Assign a CDOT Project Engineer to perform construction inspection activities, as deemed necessary, to ensure that the County SH 24 Corridor Fiber Optic Infrastructure is properly installed and constructed in accordance with the County SH 24 Corridor Fiber Optic Infrastructure Project Plans as approved by CDOT.

9. Grant the County non-exclusive access to the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW in accordance with the terms and conditions in this Agreement. Non-exclusive access shall be imputed upon execution of this Agreement without further action being necessary and shall have the same duration as identified in Section X below (TERM OF AGREEMENT) provided that the County faithfully fulfills all its obligations as identified in this Agreement. CDOT's grant of non-exclusive access to the County shall not in any manner whatsoever, limit, restrict, prohibit or prevent CDOT from granting non-exclusive access to any other third-party in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW. Any such third-party access shall not impede, restrict or limit in any manner whatsoever the County's use of the County SH 24 Fiber Optic Infrastructure.

10. Grant the County IRU the CDOT SH 24 Green Micro Duct Conduit in the CDOT SH 24 Multipath Conduit to operate the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW. The IRU shall be imputed upon execution of this Agreement without further action being necessary and shall have the same duration as identified in Section X below (TERM OF AGREEMENT).

**VIII. DISPOSITION OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE**

With respect to this Agreement, disposition of infrastructure identified in Section V.1.a and b above (OWNERSHIP OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE) shall be handled in the following manner:

1. If CDOT terminates this Agreement pursuant to Section XIV. 1 below (Termination for Cause) as a result of the County's refusal or failure to perform all its obligations, responsibilities and commitments set forth in this Agreement, which shall constitute a material default and breach of this Agreement, provided that all conditions identified in Section XI below (DISPUTES) have been mutually satisfied and further provided that the County has failed to cure the breach or default in accordance with Section XIV. 3 below (Default); the following infrastructure shall become the sole property of CDOT without any cost or expense to CDOT:

(a) The infrastructure identified in Section V.1.a and b above (OWNERSHIP OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE).

2. If, after completion of construction of the County SH 24 Corridor Fiber Optic Infrastructure, the County terminates this Agreement as a result of any of the following conditions that the County either initiates or causes to be initiated against it, provided that all conditions identified in Section XI below (DISPUTES) have been mutually satisfied and further provided that the County has failed to cure the breach or default in accordance with Section XIV. 3 below (Default), the infrastructure identified in paragraph 1 above in this same Section shall become the sole property of CDOT without any cost or expense to CDOT. However this paragraph 2 shall not apply if the County initiates Termination for Convenience as identified in Section XIV.2 below (Termination for Convenience) prior to completion of construction of the County SH 24 Corridor Fiber Optic Infrastructure or if the County initiates Termination for Cause as identified in Section XIV.1 below (Termination for Cause) or if the County exercises its option to assign this Agreement as identified, and notwithstanding anything to the contrary, in Section XIV.10 below (Assignment):

(a) Ceases its business operations in entirety or particularly in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW,

(b) Decides not to renew this Agreement upon expiration,

(c) Files a voluntary petition for relief to the bankruptcy laws of the United States or of the State of Colorado,

(d) Is subject to an involuntary petition filed against it for relief pursuant to the bankruptcy or insolvency laws of the United States or of the State of Colorado,

(e) Makes an assignment for the benefit of creditors,

(f) Does or permits to be done anything which creates a lien upon the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW,

(g) Abandons the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW, which shall be defined as the County's decision to discontinue operation of the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24

Corridor – I-25 to Woodland Park Facility within the SH 24 ROW or not to assign the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW as identified, and notwithstanding anything to the contrary, in Section XIV.10 below (Assignment).

#### **IX. MAINTENANCE OF THE SH 24 CORRIDOR**

The Parties agree that the following maintenance provisions shall apply only to the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW, unless otherwise identified, for the entire term of this Agreement. The County Conduit is not part of the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW. CDOT shall not be responsible, in any manner whatsoever, to perform any maintenance activities whatsoever on the County Conduit.

1. Routine Preventative Maintenance: CDOT shall be solely responsible to perform or cause to be performed Routine Preventative Maintenance throughout the entire term of this Agreement. Routine Preventative Maintenance, as applicable, shall at a minimum consist of, but not be limited to, periodic inspection of the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW including reinstallation of knocked down fiber location markers and replacement of damaged or missing fiber location markers within the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW, clearing and cleaning debris from the CDOT SH 24 Pull Boxes and the County SH 24 Pull Boxes so that they are visible, and performing locates within three (3) business days from receipt of UNCC notice unless Force Majeure, severe weather, highway closures or extreme safety hazards exist; except that CDOT shall not be responsible to perform locates on any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW. CDOT shall supply materials such as, but not limited to, fiber location markers at its own expense and shall perform all necessary Routine Preventative Maintenance at its own expense and shall not seek reimbursement from the County for any and all cost associated with Routine Preventative Maintenance performed by CDOT on the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW.

2. Registering the CDOT SH 24 Multipath Conduit: CDOT shall register or cause to be registered the CDOT SH 24 Multipath Conduit with the Utility Notification Center of Colorado (UNCC). CDOT shall be solely responsible to pay all costs to repair and/or replace the County SH 24 Fiber Optic Cable in the CDOT SH 24 Green Micro Duct Conduit due only to failure to perform locates, or to perform locates in a timely manner, resulting in damage and/or cutting or severing the County SH 24 Fiber Optic Cable in the CDOT SH 24 Green Micro Duct Conduit. CDOT shall not be responsible to register or cause to be registered any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW, neither shall CDOT be responsible to pay for any costs to repair and/or replace any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW.

3. Emergency and Extraordinary Repairs: The Parties shall be solely responsible to perform or cause to be performed Emergency and Extraordinary Repairs throughout the entire term of this Agreement. Emergency and Extraordinary Repairs shall mean repairs required as a result of the fiber optic cables in



the CDOT SH 24 Multipath Conduit have been damaged, cut, or severed and repairs required as a result of pull boxes being crushed or damaged. CDOT shall perform and be solely responsible to pay for all necessary Emergency and Extraordinary Repairs including splicing and reconnecting of the fibers in the CDOT SH 24 Multipath Conduit; except that the County shall be solely responsible to reimburse CDOT for all costs incurred by CDOT regarding splicing and reconnecting the fibers in the County SH 24 Fiber Optic Cable in the CDOT SH 24 Green Micro Duct Conduit notwithstanding paragraph 2 above in this same Section. The County shall perform and be solely responsible to pay for all necessary Emergency and Extraordinary Repairs; including splicing and reconnecting of any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW, and repairs and/or replacement of the County SH 24 Pull Boxes.

4. Notification: In the event that the County performs Emergency and Extraordinary Repairs identified in paragraph 3 above in this same Section, the County shall notify CDOT as soon as is reasonable and practicable, and shall make reasonable effort to notify CDOT while such Emergency and Extraordinary Repair is in progress. The County's notification shall include, to the extent practicable, the nature, location and duration of the emergency and extraordinary repair, and shall be to the CDOT representative identified in Section XIII below (CONTACTS AND NOTICE ADDRESS). A telephone call followed by an email with an electronic receipt shall constitute acceptable notification as required in this same paragraph 4.

5. Entering The Parties Pull Boxes: For safety and security reasons pertaining to the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW, neither Party including, but limited to, its employees, sub-contractors, agents, entities, affiliates, etc. shall not enter the other Party's pull boxes without receiving written permission, which shall be acceptable in the form of email with an electronic receipt from the representative identified in Section XIII below (CONTACTS AND NOTICE ADDRESS), except where entry is necessary to perform Emergency and Extraordinary Repairs identified in paragraph 3 above in this same Section and in accordance with the notification provision pertaining to Emergency and Extraordinary Repairs identified in paragraph 4 above in this same Section.

6. Leaving Area of Maintenance and Repair in Good Condition: The County shall, with respect to any and all Routine Preventative Maintenance and/or Emergency and Extraordinary Repairs performed on the County SH 24 Fiber Optic Cable, any lateral conduit or fiber optic cable that the County installs and the County SH 24 Pull Boxes in the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW, restore the affected area, including but not limited to, landscaping, trees, sod, sprinkler systems and pathways, to the same or better condition as before. Failure by the County to comply with this provision shall provide basis for CDOT to seek restitution from the County for all damages and any and all other remedies that are afforded CDOT within this Agreement. The County shall maintain the SH 24 Corridor – I-25 to Woodland Park Facility in the SH 24 ROW in good repair and in tenantable condition free of trash and debris during the term of this Agreement.

7. Compliance with the CDOT Region 2 Maintenance Permit The County shall comply with all terms, conditions and provisions contained in the CDOT Region 2 Maintenance Permit regarding performance of all Routine Preventative Maintenance activities and Emergency and Extraordinary Repairs including, but not limited to, acceptable days and hours to access the SH 24 Corridor – I-25 to Woodland Park Facility,

submittal of method of handling traffic (MHT) while performing Routine Preventative Maintenance activities and Emergency and Extraordinary Repairs, CDOT approval of MHT, safety, insurance requirements, etc.

8. Relocation: Each Party recognizes that from time to time due to highway and/or transportation projects in the SH 24 ROW, it may become necessary to relocate either a portion, or all, of the infrastructure installed as part of the SH 24 Corridor – I-25 to Woodland Park Facility. If such relocation becomes necessary for whatever reason, CDOT shall be solely responsible for all costs incurred to relocate all CDOT infrastructure identified in Section IV.1.a and c above (OWNERSHIP OF THE CDOT SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE) in the SH 24 Corridor – I-25 to Woodland Park Facility, except that CDOT shall not be responsible for any costs incurred to relocate the County infrastructure identified in Section V.1.a and b above (OWNERSHIP OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE) in the SH 24 Corridor – I-25 to Woodland Park Facility. To accomplish relocation of the County infrastructure for which the County is solely and entirely responsible, the County shall have the following two (2) options:

- a. Hire a contractor to relocate the County infrastructure identified in Section V.1.a and b above (OWNERSHIP OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE) in the SH 24 Corridor – I-25 to Woodland Park Facility in accordance with CDOT construction plans and schedules. The County shall direct such contractor to coordinate with the contractor CDOT hires to perform construction and relocation of the CDOT infrastructure identified in Section IV.1.a and c above (OWNERSHIP OF THE CDOT SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE) in the SH 24 Corridor – I-25 to Woodland Park Facility to ensure that the County infrastructure is relocated in a coordinated manner and that the project is successfully completed.
- b. Authorize the contractor hired by CDOT to relocate the County infrastructure identified in Section V.1.a and b above (OWNERSHIP OF THE COUNTY SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE) in the SH 24 Corridor – I-25 to Woodland Park Facility in accordance with CDOT construction plans and schedules. The County shall be solely responsible to pay for all cost associated to relocate the County infrastructure. Due to the vested interest that the County has in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW, CDOT shall use commercially reasonable efforts to give the County notice of relocation as soon as CDOT becomes aware of such relocation and CDOT shall keep the County well informed throughout the entire relocation process, including but not limited to, development of relocation project plans and schedules. Also, CDOT shall give the County an official notice that identifies the date on which the relocation project is scheduled to begin at least one hundred twenty (120) days prior to the commencement of such relocation project.

9. Right of Access: It is understood and agreed that the County intends to use the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility only for the installation and operation of equipment to operate the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW. The County shall have the right to access

the SH 24 Corridor – I-25 to Woodland Park Facility to perform Routine Preventative Maintenance activities and Emergency and Extraordinary Repairs pursuant to this Agreement and in accordance with the terms and conditions identified in the CDOT Region 2 Maintenance Permit.

CDOT shall, at all times have the right to access and inspect all equipment and infrastructure within the SH 24 Corridor – I-25 to Woodland Park Facility to ensure that it complies with environmental regulations, the terms and conditions of this Agreement and the CDOT Region 2 Utility Permit and the CDOT Region 2 Maintenance Permit. The County shall not use the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW for any purposes other than those identified in this Agreement and the CDOT Region 2 Utility Permit and the CDOT Region 2 Maintenance Permit without the express written consent of CDOT.

10. Loss of Use: Either Party's loss of use of the SH 24 Corridor – I-25 to Woodland Park Facility shall not entitle such Party to any damages or loss from the other Party, in any manner whatsoever, for loss of use, which loss of use could be attributed, but not limited to, as a result of any Routine Preventative Maintenance, Registering the CDOT SH 24 Multipath Conduit with UNCC, Emergency and Extraordinary Repairs or any other activity described in this same Section or any other unforeseen circumstance that may result in such loss of use, and such loss of use does not relieve either Party from any obligations assumed by this Agreement, or from complete and proper fulfillment of the terms and conditions of this Agreement, neither does it entitle either Party to any compensation for damages or loss from the other Party, in any manner whatsoever, for such loss of use.

#### X. TERM OF AGREEMENT

The term of this Agreement shall be from the date of full execution by the Executive Director of the Colorado Department of Transportation, or his Designee, for an initial term of twenty (20) years. This Agreement may be renewed for an additional twenty (20) year term upon written agreement by both Parties. If the County does not seek another twenty (20) year term, CDOT shall immediately rescind grant of non-exclusive access to the County for the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW, and CDOT shall immediately cancel IRU the CDOT SH 24 Green Micro Duct Conduit. The County shall be permitted to assign the County SH 24 Corridor Fiber Optic Infrastructure to a third party as identified, and notwithstanding anything to the contrary, in Section XIV.10 below (Assignment) or the County's decision to abandon the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW in place and transfer ownership of the County SH 24 Corridor Fiber Optic Infrastructure in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW to CDOT. The Parties decision not to renew this Agreement shall have no effect whatsoever on all or any portion of the CDOT infrastructure identified in Section IV above (OWNERSHIP OF THE CDOT SH 24 CORRIDOR FIBER OPTIC INFRASTRUCTURE AND OTHER INFRASTRUCTURE) in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW. The County must give written notice of its intent to renew this Agreement, in accordance with and to the address identified in Section XIII below (CONTACTS AND NOTICE ADDRESS), at least one (1) year prior to expiration of initial term; however, this Agreement shall terminate if the Parties decide not to renew this Agreement.

#### XI. DISPUTES

Resolution of disputes or disagreements on any matter relating to the Work shall be subject to a three-step process. Upon written notification of either Party to the other Party that a dispute exists, the matter shall first be submitted jointly to the representatives identified in Section XIII below (CONTACTS AND NOTICE ADDRESS). These Parties shall collaborate to resolve the dispute. If a resolution cannot be achieved within thirty (30) days' time, the matter shall be submitted jointly to the County's Chief Information Officer and CDOT's Director of Transportation Systems Management & Operations. If a resolution cannot be achieved within thirty (30) days' time at this level, the matter shall be submitted jointly for final resolution of the dispute to the County's County Administrator and CDOT's Executive Director. The Parties agree that participation in each of these administrative procedures shall be a condition precedent to initiation of litigation, except in the case of emergency or other conditions that entitle either Party to injunctive or emergency relief from a court of competent jurisdiction, in which event no participation in the foregoing alternative dispute resolution process shall be required.

## **XII. PERSONNEL/COMPENSATION**

Neither Party to this Agreement shall be required to pay any compensation to the other Party for any services of Party personnel rendered hereunder. Nothing in this Agreement shall be construed to place the personnel of either Party under the control or employment of the other Party. Each Party remains responsible for all pay, entitlement, employment decisions and worker's compensation liabilities, for its own personnel. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages, or the right to bring or maintain any action at law, nor does either Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

## **XIII. CONTACTS AND NOTICE ADDRESS**

All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and shall be deemed to have been given as of the date such Notice is:

- (i) certifiably delivered to the Party intended,
- (ii) delivered to the Notice Address provided in this same Section or the then designated address of the Party intended,
- (iii) rejected at the then designated address of the Party intended, provided such Notice was sent prepaid,
- (iv) sent by nationally recognized overnight courier or by United States Certified Mail, return receipt requested, postage prepaid and addressed to the then designated address of the Party intended, or
- (v) sent via email to the email address specified in this same Section, with an electronic receipt. The initial notice address designated for each Party shall be as listed below. Upon at least ten (10) days' prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

Regarding the Work to be performed as outlined in this Agreement and subsequent issues throughout this Agreement term, persons to be contacted that represent the Parties include:

For CDOT – Transportation Management Center:

Colorado Department of Transportation

425C Corporate Circle

Golden, CO 80401

303-512-5800

Attn: ITS Branch Manager

With a copy to:

Colorado Department of Transportation

425C Corporate Circle

Golden, CO 80401

303-512-5800

Attn: ITS Business Development and Planning Manager

For the County:

El Paso County Information Technology Department

325 S. Cascade Ave.

Colorado Springs, CO 80903

With a copy to:

El Paso County Administrative Services

200 S. Cascade Ave.

Colorado Springs, CO 80903

#### **XIV. GENERAL AGREEMENT PROVISIONS**

1. **Termination for Cause:** If any Party shall fail to fulfill, in a timely and proper manner, its material obligations under this Agreement, or if any Party shall violate any of the material covenants, agreements, or stipulations of this Agreement, the other Party shall thereupon have the right to terminate for cause by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days prior to the effective date of such termination, provided that the provisions identified in Section XI above (DISPUTES), have been mutually satisfied, and further provided that the defaulting Party shall have thirty (30) days after receipt of written notice of the default in which to cure its failure or violation, in which case this Agreement shall not terminate, and further provided that the cure period shall be extended if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and the defaulting Party commences the cure within the thirty (30) day period and thereafter continuously

and diligently pursues the cure to completion in which case this Agreement shall not terminate. Notwithstanding anything to the contrary in this Agreement, including but not limited to the exhibits, CDOT shall not have the right to terminate this Agreement for any reason other than an uncured default by the County pursuant to this same Section XIV.1 (Termination for Cause).

2. Termination for Convenience: If at any time during the term of this Agreement, it becomes economically, technologically, or legally advisable in the County's business judgment for the County to discontinue utilizing the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW, the County may terminate this Agreement on thirty (30) days written notice to CDOT.

3. Default: Either Party may terminate this Agreement by giving written notice of breach or default if the other Party (a) becomes insolvent, unable to pay debts when due, or the subject of bankruptcy proceedings not terminated within thirty (30) days of any filing; or makes a general assignment for the benefit of creditors; or if a receiver is appointed for substantially all of its property; or (b) breaches or defaults on its obligations under this Agreement, and in either case fails to cure the breach or default within thirty (30) days after receipt of written notice, provided however, that the cure period shall be extended if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and the defaulting Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion in which case this Agreement shall not terminate. Notwithstanding anything to the contrary in this Agreement, including but not limited to the exhibits, in no event shall the cure period for either Party to cure any breach or default be less than the cure period set forth in this same paragraph 3. Furthermore, notwithstanding anything to the contrary in this Agreement, including but not limited to the exhibits, in no event may either Party terminate this Agreement as the result of an uncured breach or default unless the requirements identified in paragraph 1 above in this same Section have been satisfied.

4. Effect of Termination: Notwithstanding the County SH 24 Corridor Fiber Optic Infrastructure and any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility CDOT, in its sole discretion and authority, may require the County to remove certain County SH 24 Corridor Fiber Optic Infrastructure and any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW and restore the affected area to its condition prior to the beginning of this Agreement, normal wear and tear excluded, at the County's sole cost and expense, no later than ninety (90) days following the termination date. If such County SH 24 Corridor Fiber Optic Infrastructure and any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility is not removed from the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW within this period of time, CDOT shall have the right to have the County SH 24 Corridor Fiber Optic Infrastructure and any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility removed from the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW at the County's expense.

5. Severability: To the extent performance of the obligations of the Party may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect

the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

6. Complete Agreement: This Agreement, including all exhibits, supersedes any and all prior written or oral agreements. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State of Colorado Fiscal Rules.

7. Waiver: No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder. The Parties do not waive any of the provisions of the Governmental Immunity Act, C.R.S. 24-10-101, et seq.

8. Appropriation of Funds: In accord with the Colorado Constitution, Article X, Section 20, performance of the Parties' obligations under this Agreement is expressly subject to annual appropriation and availability of funds for that purpose.

9. Taxes, Utilities, Maintenance and other Expenses: It is understood and agreed that except as otherwise provided by law, all taxes, assessments, insurance, utilities and other operating costs and the cost of all maintenance, repairs, and improvements, and all other direct costs, charges and expenses of any kind whatsoever respecting the County's use and occupancy of the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW shall be solely borne by the County and not by CDOT.

10. Assignment: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Neither Party shall assign, sublet, delegate, or transfer any of its rights or obligations hereunder without the prior written consent of the other Party; provided, however, that notwithstanding anything to the contrary in this same Section or this Agreement, including but not limited to the exhibits, the County shall be allowed to assign this Agreement, in whole or in part, upon thirty (30) days written notice to CDOT, to other State of Colorado governmental entities including counties, cities, and including institutions of higher educations, political subdivisions or private partners. In the event that the County assigns this Agreement, the County shall use a written agreement to make that assignment, and the County shall include language in that agreement that expressly requires any assignee to assume all of the County's obligations and duties under this Agreement to CDOT for the term of this Agreement. Furthermore, the County shall provide CDOT, within fifteen (15) days of executing such assignment, a copy of the assignment agreement.

11. No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim of right of action by any other or third person or entity on such Agreement. It is the express intent of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed incidental beneficiaries only.

**12. Insurance Requirements:**

- (a) **General.** The County shall require its contractors, sub-contractors, agents and entities in any performance of the Work as identified in this Agreement obtain and maintain, at all times during the duration of this Agreement, insurance in the kinds and amounts detailed below or in the kinds and amounts identified on the CDOT Utility/Special Use Permit Application for the CDOT Region 2 Utility Permit or the CDOT Region 2 Maintenance Permit, whichever is greater and to provide an endorsement naming CDOT on all required insurance policies identified below.

The following insurance requirements must be in effect during the entire term of this Agreement. The County or its contractor shall, at its sole cost and expense, obtain insurance on the County SH 24 Corridor Fiber Optic Infrastructure and any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility including its inventory, equipment and all other personal property located on the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW against loss resulting from fire, theft or other casualty. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies licensed to do business in the State of Colorado with a minimum A.M. Best financial rating of A. If CDOT or the State Controller changes its insurance requirements at any time during the term of this Agreement, the County shall update its policy to comply with these requirements. The County shall update such policy to become effective upon the date provided by CDOT regarding such change to CDOT or the State Controller insurance requirements. CDOT shall notify the County of any changes to its insurance requirements no later than sixty (60) days prior to such change.

- (b) **Worker's Compensation.** Worker's Compensation Insurance, as required by State statute, and Employer's Liability Insurance covering all employees acting within the course and scope of their employment and work on the activities authorized by this Agreement.

- (c) **General Liability.** Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, including self-insurance to the levels noted in the Colorado Governmental Immunity Act (if applicable), covering the County SH 24 Corridor Fiber Optic Infrastructure and any lateral conduit or fiber optic cable that the County installs in the SH 24 Corridor – I-25 to Woodland Park Facility, operations, fire damage, liability arising from acts of independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

1. \$1,000,000 each occurrence;
2. \$1,000,000 general aggregate;
3. \$1,000,000 products and completed operations aggregate; and
4. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the County's contractor shall immediately obtain additional insurance to restore the full aggregate limit and



furnish to CDOT a certificate or other document satisfactory to CDOT showing compliance with this provision.

- (d) Automobile Liability. Automobile Liability Insurance covering any auto (including owned, hired and on-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit, including self-insurance to the levels noted in the Colorado Governmental Immunity Act (if applicable).
- (e) Pollution Legal Liability. If any operations are anticipated that might in any way result in the creation of a pollution exposure, the County shall also require its contractors, sub-contractors, agents and entities in any performance of the Work as identified in this Agreement obtain, maintain, and provide Pollution Legal Liability Insurance with minimum limits of liability of \$1,000,000 Each Claim and \$1,000,000 Annual Aggregate. CDOT shall be named as an Additional Insured to the Pollution Legal Liability policy of any contractors or sub-contractors. The Policy shall be written on a Claims Made form, with an extended reporting period of at least two-year following finalization of this Agreement.
- (f) Umbrella or Excess Liability. Umbrella or Excess Liability Insurance with minimum limits of \$1,000,000. This policy shall become primary (drop down) in the event the primary Liability Policy limits are impaired or exhausted. The Policy shall be written on an Occurrence form and shall be following form of the primary. The following form Excess Liability shall include CDOT as an Additional Insured of any contractors or sub-contractors.
- (g) Additional Insured. CDOT shall be named as Additional Insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of any contractors or sub-contractors hereunder.) Primacy of Coverage. Coverage required of any contractor by this Agreement shall be primary over any insurance or self-insurance program carried by the State of Colorado and/or CDOT.(i) Cancellation. The County shall provide notice to CDOT at least ten (10) days prior to cancellation by certified mail to the CDOT representatives identified in Section XIII above (CONTACTS AND NOTICE ADDRESS). This subsection (i) shall supersede any cancellation notice requirements in the CDOT Utility/Special Use Permit Application or the CDOT Region 2 Utility Permit and the CDOT Region 2 Maintenance Permit.
- (j) Subrogation Waiver. All insurance policies related in any way to this Agreement and secured and maintained by the County or contractor or sub-contractor as required herein shall include clauses stating that the County and contractor shall waive all rights of recovery, under subrogation or otherwise, against CDOT and the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- (k) Certificates. In order for this Agreement to be executed, the County, or as applicable, its contractors and sub-contractors, shall provide certificates showing insurance coverage required by this Agreement to CDOT within seven (7) business days of the execution date of this Agreement. Upon renewal of any policy, the County or contractor or sub-contractor shall deliver

to the CDOT representatives identified in Section XIII above (CONTACTS AND NOTICE ADDRESS) certificates of insurance evidencing renewals thereof. At any time during the term of this Agreement, CDOT may request in writing, and the County or contractor or sub-contractor shall thereupon within ten (10) days supply to CDOT, evidence satisfactory to CDOT of compliance with the provisions of this same Section. Insurance coverage must be in effect or this Agreement is in default.

13. Applicable Law: The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Agreement, and any legal action concerning the provisions hereof shall be brought in the City and County of Denver, State of Colorado. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall 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 will not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.

14. Caption, Construction, and Agreement Effect: The captions and headings used in this Agreement are for identification only, and shall be disregarded in any construction of the Agreement provisions. All of the terms of this Agreement shall inure to the benefit of and be binding upon the respective heirs, successors, and assigns of both CDOT and the County. If any provision of this Agreement shall be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act then the remaining provisions of this Agreement shall remain in full force and effect.

15. No Violation of Law: The County shall not commit, nor permit the commission of, any act or thing which shall be a violation of any ordinance of the municipality, City, County, or of any law of the State of Colorado or the United States. The signatories hereto aver that they are familiar with 18-8-301, et seq., (Bribery and Corrupt Influences) and 18-8-401, et seq., (Abuse of Public Office), C.R.S., as amended, and that to their knowledge no violation of such provisions is present. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

16. Hazardous Materials: With respect to any County contractor, sub-contractor, agent or entity that will be performing Work in the SH Corridor – I-25 to Woodland Park Facility within the SH 24 ROW, the County agrees and shall include in its contract with such contractor, sub-contractor, agent or entity provisions requiring the contractor, sub-contractor, agent or entity to defend, indemnify and hold harmless CDOT and any employees, agents, contractors, and officials of CDOT against any and all damages, claims, liability, loss, fines or expenses, including attorney's fees and litigation costs, related to the presence, disposal, release or clean-up of any contaminants, hazardous materials or pollutants on, over, under, from or affecting the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW subject to this Agreement, which contaminants or hazardous materials the County contractor, sub-contractor, agents or entities has caused to be located, disposed, or released on the SH 24 Corridor – I-25 to Woodland Park

Facility within the SH 24 ROW. Such contracts shall also require the County contractors, sub-contractors, agents or entities to be responsible for all damages, claims and liability to the soil, water, vegetation, buildings or personal property located thereon as well as any personal injury or property damage related to such contaminants or hazardous materials. Notwithstanding, neither the County nor its contractors, sub-contractors, agents or entities shall be responsible, and have no obligation to indemnify CDOT for hazardous materials existing or installed or released by others, including CDOT, on or in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW. Failure by the County to include in any of its agreements with its contractors, sub-contractors, agents and entities performing any work in the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW the requirement to comply with this same Section XIV.16 (Hazardous Materials) in its entirety shall impute to the County the responsibility to perform this same Section XIV.16 (Hazardous Materials) in its entirety.

17. Indemnification and Hold Harmless: With respect to any County contractors, sub-contractor, agents or entities in the performance of the Work on the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW, the County agrees and shall include in its contract with such County contractors, sub-contractors, agents or entities to indemnify, save, and hold harmless CDOT and the State of Colorado, 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 contractor, or its employees, agents, sub-contractors, or assignees pursuant to the terms of this Agreement except to the extent caused by the negligence or willful misconduct of CDOT or the State of Colorado; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

18. Additional Provisions: The County shall also comply with the following:

- (a) Any construction or maintenance related activity MAY NOT commence regarding this Agreement until the County has obtained, as applicable, the CDOT Region 2 Utility Permit and the CDOT Region 2 Maintenance Permit;
- (b) Perform all work in a safe and workmanlike manner consistent with generally accepted construction standards;
- (c) Perform all work in such a way to minimize, as is reasonably practical, any interference with the operations of CDOT;
- (d) Obtain, prior to the commencement of any work, the necessary federal, state, and local permits, licenses and approvals;
- (e) Comply with all terms and conditions of the CDOT Region 2 Utility Permit and the CDOT Region 2 Maintenance Permit, as applicable, including regarding the times and places for the performance of the work;

- (f) Not pledge or cause a lien or encumbrance of any kind to be created on the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW or on any other CDOT property or facilities or have a right to pledge or cause such a lien or encumbrance unless a lien or encumbrance of any kind on the County SH 24 Corridor Fiber Optic Infrastructure is expressly permitted elsewhere in this Agreement and agreed to in writing by CDOT.

19. **Independent Contractor:** The County shall perform its duties hereunder as an independent contractor and not as a CDOT employee of CDOT or the State of Colorado. Neither the County nor any agent or employee of County shall be deemed to be an agent or employee of CDOT or the State of Colorado. The County and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through CDOT or the State of Colorado and CDOT shall not pay for or otherwise provide such coverage for the County or any of its agents or employees. Unemployment insurance benefits shall be available to the County and its employees and agents only if such coverage is made available by the County or a third party. The County shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The County shall not have authorization, express or implied, to bind CDOT to any agreement, liability or understanding, except as expressly set forth herein. The County 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 CDOT, and
- (c) Be solely responsible for its acts and those of its employees and agents.

20. **Order of Precedence:** In the event conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) This Agreement.
- (b) **Exhibit A** – County Resolution described in Section I.12 above (FACTUAL RECITALS).
- (c) **Exhibit B** – The County Unsolicited Proposal, dated October 22, 2018 as described in Section I.5 above (FACTUAL RECITALS).
- (d) **Exhibit C** – Sample ITS Specifications as identified in Section II.3.b above (STATEMENT OF WORK), or as approved in the field by the CDOT Project Engineer. All sections labeled BASIS OF PAYMENT within the Sample ITS Specifications only apply insofar that the item identified under Pay Item is required.
- (e) CDOT's 2017 version of Standard Specifications for Road and Bridge Construction as identified in Section II.2 above (STATEMENT OF WORK).

21. **Force Majeure:** Neither Party shall be considered to be in default in performance of any obligation hereunder if failure of performance is due to forces beyond the control of the Party affected, including, but not limited to, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance,

power outage, sabotage, and restraint by court order or public authority, or by any other cause beyond the control of a Party hereto, except where by exercise of due foresight the Party could have reasonably avoided or where by exercise of due diligence the cause could have been overcome.

22. Ownership of the ROW: CDOT represents that CDOT owns or is responsible to manage the use of the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW and the County specifically understands that CDOT owns or is responsible to manage the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW at all times relevant to this Agreement.

23. Limitation on Damages: In no event shall either Party be liable to the other Party for consequential, indirect, exemplary, special, incidental, or punitive damages in connection with, arising under, or in relation to this Agreement or use of the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW however caused and regardless of the theory of liability. This Limitation on Damages clause does not exclude or limit the County's liability for death, bodily injury, damage to State tangible property, or data loss resulting from its negligence or willful acts or the negligence or willful acts of its employees or agents. This Limitation on Damages clause does not apply to any insurance required under Section 12 of this Agreement.

24. Third Party Approval: CDOT represents that CDOT owns the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW and that no third-party consents or approvals are required for the construction and operation of the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW.

25. No New Permanent Structures: Except as authorized by this Agreement, no permanent structures or facilities of any kind shall be erected or moved upon or within the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW by the County without the express written prior permission of CDOT. Any such structure/facilities erected or moved upon or within the SH 24 Corridor – I-25 to Woodland Park Facility within the SH 24 ROW without the express written consent of CDOT may be immediately removed by CDOT at the expense of the County.

26. Modification of Terms and Conditions: CDOT and the County hereby reserve the right to alter, amend or modify the terms and conditions of this Agreement upon written agreement by both Parties. Notice of the requested modification shall be given to the representatives identified in Section XIII above (CONTACTS AND NOTICE ADDRESS) at least thirty (30) days prior to instituting any alteration, amendment or modification of the terms or conditions of this Agreement. Any amendment fully executed by the Parties to this Agreement in accordance with this same Section shall be incorporated herein, made part of and attached to this Agreement. Such notice shall be acceptable in the form of email, with an electronic receipt.

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27. Signature Authority: Each Party represents and warrants that it has taken all actions that are necessary or that are required by its respective procedures and applicable law to legally authorize the undersigned signatory for that Party to execute this Agreement on behalf of the Party and to bind the Party to its terms.

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

<p align="center"><b>COUNTY</b> El Paso County</p> <hr/> <p>By: Name &amp; Title of Person Signing for County</p> <p>Date: _____</p>	<p align="center"><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p align="center">2nd State or Contractor Signature if Needed</p> <hr/> <p align="center">Signature</p> <hr/> <p align="center">By: (Print Name and Title)</p> <p>Date: _____</p>	<p align="center"><b>LEGAL REVIEW</b> Philip J. Weiser, Attorney General</p> <hr/> <p align="center">Assistant Attorney General</p> <hr/> <p align="center">By: (Print Name and Title)</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.</p> <p align="center"><b>STATE OF COLORADO</b> <b>Governor's Office of Information Technology</b> Theresa M. Szczurek, Ph.D. <b>Chief Information Officer &amp; Executive Director</b></p> <p>By: _____</p> <p><input type="checkbox"/> Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer</p> <p><input type="checkbox"/> Laura Calder, Deputy Chief Financial Officer</p> <p>Date: _____</p>	<p>In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center"><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p align="center">Office of the State Controller, Controller Delegate</p> <p align="center">Effective Date: _____</p>

Routing #: 19-HAA-XC-00049

OLA #: 331001918

CMS #: 127670

## EXHIBIT A – EL PASO COUNTY RESOLUTION

Routing #: 19-HAA-XC-00049

OLA #: 331001918

CMS #: 127670

## EXHIBIT B – EL PASO COUNTY UNSOLICITED PROPOSAL



Routing #: 19-HAA-XC-00049

OLA #: 331001918

CMS #: 127670

## EXHIBIT C – SAMPLE ITS SPECIFICATIONS