

ORDINANCE NO. 011
OF THE CITY OF FORT COLLINS ELECTRIC UTILITY ENTERPRISE
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR
THE LEASE OF FIBER OPTIC DATA TRANSPORT CAPACITY

WHEREAS, the City of Fort Collins, Colorado is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Art. XX of the Constitution of the State of Colorado and the home rule charter of the City (the “Charter”); and

WHEREAS, pursuant to Section 19.3(b) of the Charter Art. V (“Section 19.3(b)”), the City Council has established the City’s Electric Utility as an enterprise of the City (the “Enterprise”) in ordinances codified in §26-392 of the Fort Collins City Code (the “Code”); and

WHEREAS, pursuant to Section 19.3(b) and Code §26-392, the Council has authorized the Enterprise, by and through the Council sitting as the board of the Enterprise (the “Board”), to enter into financial obligations, payable solely from operations of the Electric Utility; and

WHEREAS, voters of Fort Collins approved all legally required ballot measures to authorize the City to acquire and operate municipal telecommunications utility facilities and services (a “broadband system”), and the Enterprise has undertaken the establishment and operation of a broadband system through the Electric Utility (“Fort Collins Connexion”); and

WHEREAS, to provide a reliable and cost-effective broadband system, the City desires to collaborate with other governmental entities to leverage resources, including connections with regional and national telecommunication networks, for the benefit of the City's residents and Fort Collins Connexion ratepayers; and

WHEREAS, the Colorado Department of Transportation (CDOT) built and maintains a fiber optic network to manage State highways which contains unused “dark” fiber and facilities located along Interstate Highway 25 (I-25), adjacent to the City’s boundaries; and

WHEREAS, Fort Collins Connexion staff has negotiated access and data transport rights through third party telecommunications facilities, and needs cost-effective means to access those facilities and services in Denver; and

WHEREAS, the parties recently negotiated a proposed intergovernmental dark fiber lease agreement to share capital improvements by CDOT and provide Fort Collins Connexion transport service on CDOT facilities along I-25, a copy of which is attached hereto an Exhibit A (the “IGA”) for up to twenty years; and

WHEREAS, under the IGA, CDOT will dedicate two fiber optic strands for Fort Collins Connexion and other governmental service purposes, including connecting the City’s broadband system with a regional telecommunication facility in Denver, Colorado; and

WHEREAS, as Colorado governmental entities, the City, acting through the Enterprise, and the State of Colorado are authorized, pursuant to Colorado Revised Statutes Section 29-1-203, to cooperate or contract with one another to acquire or provide any government function, service, or facility lawfully authorized to each; and

WHEREAS, the long-term license contract authorized under this Ordinance will permit Fort Collins Connexion to connect its subscribers to regional and national telecommunication networks, maintain a reliable broadband system, and will be payable solely from revenues of Fort Collins Connexion; and

WHEREAS, the Enterprise Board's adoption of this Ordinance is in the exercise of its authority as described above to approve and enter into contracts like the Authorized Obligations to enable Fort Collins Connexion to offer video services to its customers.

WHEREAS, the City Council, acting ex officio as the Board pursuant to Section 19.3(b), has determined the IGA between the Enterprise and CDOT is in the best interests of the City, its citizens, and ratepayers to accomplish the purposes set forth therein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF THE ELECTRIC UTILITY ENTERPRISE OF THE CITY OF FORT COLLINS as follows:

Section 1. That the Enterprise Board hereby makes and adopts the determinations and findings contained in the recitals set forth above. In addition, the Mayor, as the Enterprise's president, and the City Clerk, as the Enterprise's secretary, are both authorized to sign this Ordinance in their respective capacities.

Section 2. That the Enterprise Board hereby finds it is in the best interests of the Enterprise, the Electric Utility and the City to enter into the IGA with the Colorado Department of Transportation.

Section 3. That the Enterprise Board hereby approves the IGA, and the Mayor is authorized, in consultation with the City Manager and City Attorney and consistent with this Ordinance, to finalize and execute the IGA, as the Enterprise's president, in substantially the form attached hereto as Exhibit "A".

Section 4. That in addition, the City Manager is authorized, during the term of the IGA and, in consultation with the City Attorney, to approve and execute such amendments to the IGA as the City Manager determines to be reasonably necessary and appropriate to: (a) protect the City's interests or to effectuate the purposes of this Ordinance and (b) provide a benefit to the City; provided that any additional financial obligation is conditioned upon funds having been already appropriated and approved by the City Council or conditioned upon such appropriation.

Section 5. That the IGA shall not constitute a debt or obligation of the City and shall be payable solely from the revenues of Fort Collins Connexion.

Introduced, considered favorably on first reading, and ordered published this 21st day of April, A.D. 2020, and to be presented for final passage on the 5th day of May, A.D. 2020.

DocuSigned by:
Wade Trossell
F972F432DED1484...

President

ATTEST:

DocuSigned by:
Silvan Calderon
DA94896740DA4BA...

Secretary

Passed and adopted on final reading on the 5th day of May, A.D. 2020.

DocuSigned by:
Wade Trossell
F972F432DED1484...

President

ATTEST:

DocuSigned by:
Silvan Calderon
DA94896740DA4BA...

Secretary

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT (NON-EXPENDITURE)

COVER PAGE

State Agency Colorado Department of Transportation (CDOT)	Contract Number 20-HAA-XE-03001		
Contractor City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion (Connexion or Contractor)	Contract Performance Beginning Date Effective Date		
Initial Contract Expiration Date Twenty years from the Effective Date.			
Contract Authority §24-110-101 et seq., C.R.S.			
Contract Purpose CDOT to lease Connexion two existing dark single-mode fiber optics telecommunication strands located within the public rights of way along Interstate 25 from Milepost 268.2 to Milepost 209.2 and fiber strands extending further into Denver, terminating at the super vault outside of 910 15 th Street, Denver, CO.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work 2. Exhibit B – Sample Option Letter <p>In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Colorado Special Provisions in §18 of the main body of this Contract. 2. The provisions of the other sections of the main body of this Contract. 3. Exhibit A, Statement of Work. 4. Exhibit B, Sample Option Letter. 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> For the State: Bob Fifer Colorado Department of Transportation Division of Maintenance & Operations 425 C Corporate Circle Golden, CO 80401 bob.fifer@state.co.us </td> <td style="width: 50%; vertical-align: top;"> For Contractor: John Robbins City of Fort Collins Electric Utility Enterprise dba Fort Collins Connection 215 N. Mason Street Fort Collins, CO 80524 jrobbins@fcgov.com </td> </tr> </table>		For the State: Bob Fifer Colorado Department of Transportation Division of Maintenance & Operations 425 C Corporate Circle Golden, CO 80401 bob.fifer@state.co.us	For Contractor: John Robbins City of Fort Collins Electric Utility Enterprise dba Fort Collins Connection 215 N. Mason Street Fort Collins, CO 80524 jrobbins@fcgov.com
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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p style="text-align: center;">CONTRACTOR</p> <p style="text-align: center;">City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion</p> <hr/> <p>By: _____, Enterprise Board President</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p>By: Stephen Harelson, P.E., Chief Engineer</p> <p>Effective Date: _____</p>
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TABLE OF CONTENTS

	COVER PAGE	1
	SIGNATURE PAGE	2
1.	PARTIES	3
2.	TERM AND EFFECTIVE DATE.....	3
3.	DEFINITIONS	4
4.	STATEMENT OF WORK	6
5.	PAYMENTS TO CONTRACTOR	6
6.	REPORTING - NOTIFICATION	6
7.	CONTRACTOR RECORDS.....	6
8.	[RESERVED].....	7
9.	CONFLICTS OF INTEREST.....	7
10.	INSURANCE	7
11.	BREACH OF CONTRACT	8
12.	REMEDIES	9
13.	DISPUTE RESOLUTION.....	10
14.	NOTICES AND REPRESENTATIVES	10
15.	RIGHTS IN WORK PRODUCT AND OTHER INFORMATION.....	11
16.	[RESERVED].....	12
17.	GENERAL PROVISIONS	11
18.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).....	14

1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the State Agency named on the Cover Page for this Contract (the “State”). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date.

B. Initial Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Cover Page for this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State’s Option

Subject to mutual agreement the State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of ten years or less at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. The total duration of this Contract, including the exercise of any options to extend, shall not exceed forty years from its Effective Date.

D. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a.**

iii. To the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the Contractor, it shall be subject to annual appropriation by the Contractor's City Council as required in Article V, Section 8(b) of the City of Fort Collins Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The Contractor shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- C. **"Contract"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- D. **"Contractor Records"** means any and all Contractor data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA and records of current or former users of public utility services delivered by Contractor.
- E. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.

- F. **“Disaster”** means a sudden event which causes severe damage including, but not limited to, droughts, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, riots, civil disorders or other catastrophes, except it does not include economic dislocations
- G. **“Effective Date”** means the date on which this Contract is approved and signed by the Chief Engineer of the Colorado Department of Transportation or designee, as shown on the Signature Page for this Contract.
- H. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- I. **“Extension Term”** means the time period defined in §2.C.
- J. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- K. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401 et. seq. C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.”
- L. **“Initial Term”** means the time period defined in §2.B.
- M. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- N. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- O. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- P. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- Q. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- R. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- S. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- T. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work

Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A. This Contract involves an exchange of resources, goods, or services that shall not result in the expenditure of funds by the State. The State shall have no liability to compensate Contractor for the delivery of any Goods or the performance of any Services under this Contract. The Parties shall ensure that all Contractor Records, State Records, and Work Product in the possession of the Parties are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

5. PAYMENTS TO CONTRACTOR

- A. The exchange of resources, goods, or services under this Contract shall not result in the expenditure of funds by the State. The State shall have no payment obligations to Contractor under this Contract.
- B. Contractor shall make payments to the State in accordance with the provisions of Exhibit A.

6. REPORTING - NOTIFICATION

A. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor’s ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State’s principal representative identified on the Cover Page for this Contract.

7. CONTRACTOR RECORDS

The Contractor shall provide records in accordance with this Section 7, if applicable, for any services other than the leasing of dark fiber.

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the “Contractor Records”). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date three years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved, or **(v)** as set forth in Contractor’s published record retention schedule (the “Record Retention Period”).

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. [RESERVED]

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a Breach of Contract.

10. INSURANCE

Contractor shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Contractor Insurance

The Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor.

C. Primacy of Coverage

Coverage required of Contractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

D. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

E. Subrogation Waiver

All commercial insurance policies secured or maintained by Contractor in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

F. Certificates

For each commercial insurance plan provided by Contractor under this Contract, Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §10.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State,

in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor.

ii. Remedies Not Involving Termination

This Section 11 A. ii only applies in the event Contractor engages with the State for any services other than leasing dark fiber.

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in the performance schedule. Contractor shall promptly cease

performing Work in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be

given under this Contract shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Contract.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. [RESERVED]

17. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in §17.A, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use

digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules, and Contractor's municipal charter. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

L. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

M. Taxes

The Parties as individually each is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). Neither Party shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on the other Party.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§17.A**, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of either Party, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and each Party's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

B. **INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when**

requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

C. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

D. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

E. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

F. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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EXHIBIT A, STATEMENT OF WORK

City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion (“Connexion”) CDOT Dark Fiber Lease

1. Contract Description

- a. Colorado Department of Transportation (CDOT) owns and operates a fiber optic telecommunications backbone located within the public rights of way (ROW) along Interstate 25 (I-25) from Milepost 268.2 at Prospect Road to Milepost 209.2 near 6th Avenue and fiber strands extending further into Denver terminating at the super vault outside of 910 15th Street, Denver, CO. Connexion desires to lease two (2) existing dark single-mode fiber optics telecommunication strands along the corridor from CDOT.

2. Connexion’s Responsibilities

- a. Connexion shall procure, provide, install and maintain handholes at the I-25 and Prospect Road (A location) splice point to access the leased dark fiber strands. After infrastructure is in place and ready for fiber splice work, Connexion shall submit written request for splice work to CDOT Intelligent Transportation Systems (ITS) Network Operations Center.
- b. Connexion is responsible for all fees and access into the 910 15th Street facilities (Z location) from the CDOT demarcation.
- c. Connexion is responsible for any networking designs and implementation as it is associated to the optronics to extend between A location and Z locations.
- d. Connexion shall perform all applicable maintenance related activities, on Connexion owned handhold and related Connexion owned infrastructure including required relocations.
- e. Connexion shall apply for and obtain the applicable CDOT Region Utility Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Utility Permit.
- f. Connexion shall apply for and obtain the applicable CDOT Region Maintenance Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Maintenance Permit.
- g. Connexion shall pay an annual fee as shown in Attachment A and further described below in Section 5. Payment.
- h. Connexion shall provide contact information list for their entity’s staff that are responsible for managing the fiber infrastructure including emergency contacts when Emergency and Extraordinary Repairs are necessary.
- i. Within sixty (60) days of termination of the Agreement for any reason, non-renewal, or expiration, Connexion may remove any equipment or other appurtenances, but Connexion shall not excavate or disturb the topsoil in removal thereof, and all conduit

and fiber installed in CDOT's right of way(s) shall be abandoned in place and become the sole property of CDOT.

3. CDOT Responsibilities

- a. CDOT shall provide 2 strands of dark fiber along I-25 from Prospect Road, Fort Collins to 6th Avenue, Denver and through Denver to 910 15th Street entrance vault or other designated entrance demarcation, for an annual lease fee as shown in Attachment A.
- b. CDOT shall identify and assign leased strands for Connexion use within 90 days of execution of this Agreement.
- c. CDOT shall conduct all splice work on CDOT owned facilities.
- d. Issue the applicable CDOT Region Utility Permit(s) within forty-five (45) days of receiving the Connexion's properly completed and compliant 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 Utility Permit(s) not possible within forty-five (45) days.
- e. Issue the applicable CDOT Region Maintenance Permit(s) within forty-five (45) days of receiving Company's properly completed and compliant application provided that no mitigating circumstances or other issues must be addressed thereby making issuance of said CDOT Region Maintenance Permit(s) not possible within forty-five (45) days.
- f. CDOT shall perform all applicable maintenance related activities on the CDOT owned fiber optic cables, including:
 - i. Routine Preventative Maintenance: Routine Preventative Maintenance, as applicable, shall at a minimum consist of, but not be limited to, periodic inspection of the project facility, including reinstallation of knocked down fiber location markers and replacement of damaged or missing fiber location markers, clearing and cleaning debris from the facility 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. CDOT shall supply materials such as, but not limited to, fiber location markers at its own expense and shall perform all necessary Route Preventative Maintenance at its own expense and shall not seek reimbursement for any and all costs associated with Route Preventative Maintenance performed.
 - ii. Registering the Project Facility: CDOT shall register or cause to be registered the project facility. CDOT shall be solely responsible to pay all costs to repair and/or replace the project facility due only to failure to perform locates, or to perform locates in a timely manner, resulting in damage and/or cutting or severing the fiber infrastructure in the project facility. CDOT shall not be responsible to register or cause to be registered any lateral conduit or fiber optic cable the other party installs, neither shall CDOT be responsible to pay for any costs to repair and/or replace any lateral conduit or fiber optic cable installed by the other party.

- iii. Emergency and Extraordinary Repairs: Emergency and Extraordinary Repairs shall mean repairs required as a result of the fiber optic cables in the project facility 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 project facility. CDOT's standard for restoral of outages and damages are best effort.
 - iv. Scheduled Maintenance: CDOT may need to conduct work that requires a scheduled outage of their fiber optic cable. In the event of a scheduled outage CDOT shall provide 3 days notice for any scheduled outage not to exceed 8 hours unless it is an emergency repair.
 - v. Notification: In the event that Emergency and Extraordinary Repairs are performed, the parties shall notify each other as soon as is reasonable and practicable, and shall make reasonable effort to notify each other while such Emergency and Extraordinary Repair is in progress. Notification shall include, to the extent practicable, the nature, location and duration of the Emergency and Extraordinary Repair. A telephone call followed by an email with an electronic receipt shall constitute acceptable notification.
 - vi. Entering the Parties Pull Boxes: For safety and security reasons CDOT, including but not limited to, CDOT's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter Connexion's labeled pull boxes, vaults and/or manholes without receiving written permission. For safety and security reasons Connexion including but not limited to, Connexion's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter CDOT's pull boxes, vaults and/or manholes without receiving written permission. Written permission shall be acceptable in the form of email with an electronic receipt, except where entry is necessary to perform Emergency and Extraordinary Repairs.
 - vii. Loss of Use: Either Party's loss of use of the Project 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 Project Facility 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.
4. Relocation: Each Party recognizes that from time to time due to highway and/or transportation projects in the CDOT ROW, it may become necessary to relocate either a portion, or all, of the infrastructure installed as part of the properly executed Agreement. If such relocation becomes

necessary for whatever reason, CDOT shall be solely responsible for all costs incurred to relocate all CDOT infrastructure, except that CDOT shall not be responsible for any costs incurred to relocate all Connexion's infrastructure. To accomplish relocation of Connexion's infrastructure for which Connexion is solely and entirely responsible, Connexion shall have the following two (2) options:

- a. Hire a contractor to relocate Connexion's infrastructure in accordance with CDOT construction plans and schedules. Connexion shall direct such contractor to coordinate with the contractor CDOT hires to perform construction and relocation of the CDOT infrastructure to ensure that the Connexion's infrastructure is relocated in a coordinated manner and that the project is successfully completed.
- b. Authorize the contractor hired by CDOT to relocate Connexion's infrastructure in accordance with CDOT construction plans and schedules. Connexion shall be solely responsible to pay for all cost associated to relocate Connexion's infrastructure. Due to the vested interest that Connexion has in fiber infrastructure installed in the CDOT ROW, CDOT shall use commercially reasonable efforts to give Connexion notice of relocation as soon as CDOT becomes aware of such relocation and CDOT shall keep Connexion well informed throughout the entire relocation process, including but not limited to, development of relocation project plans and schedules. Also, CDOT shall give Connexion an official notice that identifies the schedule at least one hundred twenty (120) days prior to the commencement of such relocation project.

5. Payment

- a. Connexion shall make the first year's Total Annual Lease Payment as shown in Attachment A within thirty (30) days of the Effective Date. Connexion may pay the last year's Total Annual Lease Payment based on a prorated amount of the last year's annual lease payment corresponding from the anniversary of the Effective Date to the expiration date of this Lease Agreement.
- b. Connexion shall pay CDOT an annual lease payment for each subsequent year of the term of this Lease Agreement within thirty (30) days of the anniversary of the Effective Date. The annual lease payment shall automatically be increased by three percent (3%) each year after the first year. Connexion shall pay the Total Annual Lease Payment amount for each subsequent year of the Lease Agreement term as shown in Attachment A. Payments shall be made payable to CDOT at:

Colorado Department of Transportation
C/o Accounting Receipts & Deposits
2829 West Howard Place
Denver, CO 80204

Or at such place as CDOT from time to time designates by notice. In the event CDOT has not received the Total Annual Lease Payment hereunder within forty-five (45) days after said payment becomes due and owing, a late charge of five percent (5%) of that Total Annual Lease Payment shall be assessed to Connexion. If fees owed by Connexion are 90 days or more past due, CDOT may disconnect leased dark fibers with a minimum of thirty (30) days prior written notice.

EXHIBIT A , ATTACHMENT A

City of Fort Collins I-25 Fiber Lease Estimate - Prospect Road to FR GIGA Pop - One pair (2 fiber strands)										Annual Lease Payment																		
Corridor Description	Begin Mile Point	End Mile Point	Fiber Strands	Lease Rate per Strand	Corridor Length	Corridor Priority	Corridor Multiplier	Annual Index Increase Rate	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
I-25 From Prospect Road to Valpo St	208.2	208.2	2	\$1,750.00	0.00	1	1	3%	\$10,325	\$10,635	\$10,994	\$11,282	\$11,621	\$11,970	\$12,329	\$12,698	\$13,079	\$13,472	\$13,876	\$14,292	\$14,721	\$15,163	\$15,617	\$16,086	\$16,569	\$17,066	\$17,578	\$18,106
Valpo St			2	\$1,750.00	0.22	1	1	3%	539	540	541	542	543	545	546	547	549	550	552	553	555	557	558	560	562	564	566	568
BH Ave			2	\$1,750.00	0.06	1	1	3%	57	57	57	58	58	58	58	59	59	59	59	59	510	510	511	511	511	511	512	512
Wyandot St			2	\$1,750.00	0.21	1	1	3%	537	538	539	540	541	543	544	545	547	548	549	551	552	554	556	557	557	559	561	563
Yuma St			2	\$1,750.00	0.24	1	1	3%	542	543	545	546	547	549	550	552	555	556	558	560	562	564	565	567	567	569	572	574
12th Ave			2	\$1,750.00	0.1	1	1	3%	518	518	519	519	520	520	521	522	522	523	524	525	526	526	526	527	528	529	530	531
University St			2	\$1,750.00	0.1	1	1	3%	518	518	519	519	520	520	521	522	522	523	524	524	525	526	526	527	528	529	530	531
13th Ave			2	\$1,750.00	1.17	1	1	3%	5205	5211	5217	5224	5230	5237	5244	5252	5259	5267	5275	5283	5292	5301	5310	5319	5329	5338	5349	5359
Barrock St			2	\$1,750.00	0.22	1	1	3%	539	540	541	542	543	545	546	547	549	550	553	553	553	555	557	558	560	562	564	566
14th Ave			2	\$1,750.00	0.45	1	1	3%	579	581	584	586	589	591	594	597	600	603	606	609	612	616	619	623	626	630	634	638
Champa St			2	\$1,750.00	0.1	1	1	3%	518	518	519	519	520	520	521	522	522	523	524	524	525	526	526	527	528	529	530	531
15th St			2	\$1,750.00	0.02	1	1	3%	54	54	54	54	54	54	54	54	54	54	55	55	55	55	55	55	55	55	56	56
Total Annual Lease Req*									\$10,827	\$11,152	\$11,487	\$11,831	\$12,186	\$12,552	\$12,928	\$13,316	\$13,716	\$14,127	\$14,551	\$14,987	\$15,437	\$15,900	\$16,377	\$16,869	\$17,375	\$17,896	\$18,433	\$18,986

*Estimate based on assumed path to 910 15th St. and could change after verifying exact route.

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00	Option Contract Number Insert CMS number or Other Contract Number of this Option
Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00	Contract Performance Beginning Date Month Day, Year
Total for All State Fiscal Years \$0.00	Current Contract Expiration Date Month Day, Year

1. OPTIONS:

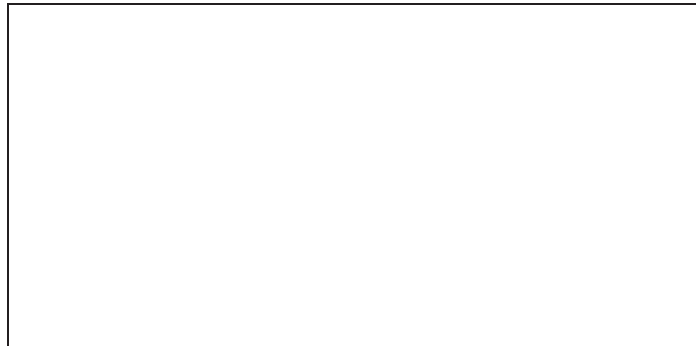
Option to extend for an Extension Term

2. REQUIRED PROVISIONS:

In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

3. OPTION EFFECTIVE DATE:

A. The effective date of this Option Letter is upon approval of the State or _____, whichever is later.



<p>CONTRACTOR City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p>
<p>By: _____, Enterprise Board President</p> <p>Date: _____</p>	<p>By: Stephen Harelson, P.E., Chief Engineer</p> <p>Effective Date: _____</p>

**STATE OF COLORADO
 INTERGOVERNMENTAL AGREEMENT
 (NON-EXPENDITURE)**

COVER PAGE

State Agency Colorado Department of Transportation (CDOT)	Contract Number 20-HAA-XE-03001		
Contractor City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion (Connexion or Contractor)	Contract Performance Beginning Date Effective Date		
Initial Contract Expiration Date Twenty years from the Effective Date.			
Contract Authority §24-110-101 et seq., C.R.S.			
Contract Purpose CDOT to lease Connexion two existing dark single-mode fiber optics telecommunication strands located within the public rights of way along Interstate 25 from Milepost 268.2 to Milepost 209.2 and fiber strands extending further into Denver, terminating at the super vault outside of 910 15 th Street, Denver, CO.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work 2. Exhibit B – Sample Option Letter In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> 1. Colorado Special Provisions in §18 of the main body of this Contract. 2. The provisions of the other sections of the main body of this Contract. 3. Exhibit A, Statement of Work. 4. Exhibit B, Sample Option Letter. 			
Principal Representatives <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> For the State: Bob Fifer Colorado Department of Transportation Division of Maintenance & Operations 425 C Corporate Circle Golden, CO 80401 bob.fifer@state.co.us </td> <td style="width: 50%;"> For Contractor: John Robbins City of Fort Collins Electric Utility Enterprise dba Fort Collins Connection 215 N. Mason Street Fort Collins, CO 80524 jrobbins@fcgov.com </td> </tr> </table>		For the State: Bob Fifer Colorado Department of Transportation Division of Maintenance & Operations 425 C Corporate Circle Golden, CO 80401 bob.fifer@state.co.us	For Contractor: John Robbins City of Fort Collins Electric Utility Enterprise dba Fort Collins Connection 215 N. Mason Street Fort Collins, CO 80524 jrobbins@fcgov.com
For the State: Bob Fifer Colorado Department of Transportation Division of Maintenance & Operations 425 C Corporate Circle Golden, CO 80401 bob.fifer@state.co.us	For Contractor: John Robbins City of Fort Collins Electric Utility Enterprise dba Fort Collins Connection 215 N. Mason Street Fort Collins, CO 80524 jrobbins@fcgov.com		

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p>CONTRACTOR City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion</p> <hr/> <p>By: _____, Enterprise Board President</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p>By: Stephen Harelson, P.E., Chief Engineer</p> <p>Effective Date: _____</p>
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TABLE OF CONTENTS

COVER PAGE 1
 SIGNATURE PAGE 2
 1. PARTIES 3
 2. TERM AND EFFECTIVE DATE 3
 3. DEFINITIONS 4
 4. STATEMENT OF WORK 6
 5. PAYMENTS TO CONTRACTOR 6
 6. REPORTING - NOTIFICATION 6
 7. CONTRACTOR RECORDS 6
 8. [RESERVED] 7
 9. CONFLICTS OF INTEREST 7
 10. INSURANCE 7
 11. BREACH OF CONTRACT 8
 12. REMEDIES 9
 13. DISPUTE RESOLUTION 10
 14. NOTICES AND REPRESENTATIVES 10
 15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION 11
 16. [RESERVED] 12
 17. GENERAL PROVISIONS 11
 18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3) 14

1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the State Agency named on the Cover Page for this Contract (the “State”). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date.

B. Initial Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Cover Page for this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State’s Option

Subject to mutual agreement the State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of ten years or less at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. The total duration of this Contract, including the exercise of any options to extend, shall not exceed forty years from its Effective Date.

D. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a.**

iii. To the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the Contractor, it shall be subject to annual appropriation by the Contractor's City Council as required in Article V, Section 8(b) of the City of Fort Collins Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The Contractor shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- C. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- D. **“Contractor Records”** means any and all Contractor data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA and records of current or former users of public utility services delivered by Contractor.
- E. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.

Exhibit A

SAP OLA #:351001572
Routing #: 20-HAA-XE-03001

- F. “**Disaster**” means a sudden event which causes severe damage including, but not limited to, droughts, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, riots, civil disorders or other catastrophes, except it does not include economic dislocations
- G. “**Effective Date**” means the date on which this Contract is approved and signed by the Chief Engineer of the Colorado Department of Transportation or designee, as shown on the Signature Page for this Contract.
- H. “**Exhibits**” means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- I. “**Extension Term**” means the time period defined in §2.C.
- J. “**Goods**” means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- K. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401 et. seq. C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.”
- L. “**Initial Term**” means the time period defined in §2.B.
- M. “**Party**” means the State or Contractor, and “**Parties**” means both the State and Contractor.
- N. “**Services**” means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- O. “**State Fiscal Rules**” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- P. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- Q. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- R. “**Subcontractor**” means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- S. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.
- T. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work

Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A. This Contract involves an exchange of resources, goods, or services that shall not result in the expenditure of funds by the State. The State shall have no liability to compensate Contractor for the delivery of any Goods or the performance of any Services under this Contract. The Parties shall ensure that all Contractor Records, State Records, and Work Product in the possession of the Parties are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

5. PAYMENTS TO CONTRACTOR

- A. The exchange of resources, goods, or services under this Contract shall not result in the expenditure of funds by the State. The State shall have no payment obligations to Contractor under this Contract.
- B. Contractor shall make payments to the State in accordance with the provisions of Exhibit A.

6. REPORTING - NOTIFICATION

A. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor’s ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State’s principal representative identified on the Cover Page for this Contract.

7. CONTRACTOR RECORDS

The Contractor shall provide records in accordance with this Section 7, if applicable, for any services other than the leasing of dark fiber.

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the “Contractor Records”). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date three years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved, or **(v)** as set forth in Contractor’s published record retention schedule (the “Record Retention Period”).

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. [RESERVED]

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a Breach of Contract.

10. INSURANCE

Contractor shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Contractor Insurance

The Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor.

C. Primacy of Coverage

Coverage required of Contractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

D. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

E. Subrogation Waiver

All commercial insurance policies secured or maintained by Contractor in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

F. Certificates

For each commercial insurance plan provided by Contractor under this Contract, Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §10.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State,

in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES**A. State's Remedies**

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor.

ii. Remedies Not Involving Termination

This Section 11 A. ii only applies in the event Contractor engages with the State for any services other than leasing dark fiber.

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in the performance schedule. Contractor shall promptly cease

performing Work in accordance with the State’s directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor’s employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State’s best interest.

c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor’s Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be

given under this Contract shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Contract.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**A. Work Product**

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. [RESERVED]**17. GENERAL PROVISIONS**

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **§17.A**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use

digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules, and Contractor's municipal charter. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

L. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

M. Taxes

The Parties as individually each is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). Neither Party shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on the other Party.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§17.A**, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of either Party, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and each Party's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

B. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when**

requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

C. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

D. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

E. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

F. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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EXHIBIT A, STATEMENT OF WORK

City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion (“Connexion”)
CDOT Dark Fiber Lease

1. Contract Description

- a. Colorado Department of Transportation (CDOT) owns and operates a fiber optic telecommunications backbone located within the public rights of way (ROW) along Interstate 25 (I-25) from Milepost 268.2 at Prospect Road to Milepost 209.2 near 6th Avenue and fiber strands extending further into Denver terminating at the super vault outside of 910 15th Street, Denver, CO. Connexion desires to lease two (2) existing dark single-mode fiber optics telecommunication strands along the corridor from CDOT.

2. Connexion’s Responsibilities

- a. Connexion shall procure, provide, install and maintain handholes at the I-25 and Prospect Road (A location) splice point to access the leased dark fiber strands. After infrastructure is in place and ready for fiber splice work, Connexion shall submit written request for splice work to CDOT Intelligent Transportation Systems (ITS) Network Operations Center.
- b. Connexion is responsible for all fees and access into the 910 15th Street facilities (Z location) from the CDOT demarcation.
- c. Connexion is responsible for any networking designs and implementation as it is associated to the optronics to extend between A location and Z locations.
- d. Connexion shall perform all applicable maintenance related activities, on Connexion owned handhold and related Connexion owned infrastructure including required relocations.
- e. Connexion shall apply for and obtain the applicable CDOT Region Utility Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Utility Permit.
- f. Connexion shall apply for and obtain the applicable CDOT Region Maintenance Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Maintenance Permit.
- g. Connexion shall pay an annual fee as shown in Attachment A and further described below in Section 5. Payment.
- h. Connexion shall provide contact information list for their entity’s staff that are responsible for managing the fiber infrastructure including emergency contacts when Emergency and Extraordinary Repairs are necessary.
- i. Within sixty (60) days of termination of the Agreement for any reason, non-renewal, or expiration, Connexion may remove any equipment or other appurtenances, but Connexion shall not excavate or disturb the topsoil in removal thereof, and all conduit

and fiber installed in CDOT's right of way(s) shall be abandoned in place and become the sole property of CDOT.

3. CDOT Responsibilities

- a. CDOT shall provide 2 strands of dark fiber along I-25 from Prospect Road, Fort Collins to 6th Avenue, Denver and through Denver to 910 15th Street entrance vault or other designated entrance demarcation, for an annual lease fee as shown in Attachment A.
- b. CDOT shall identify and assign leased strands for Connexion use within 90 days of execution of this Agreement.
- c. CDOT shall conduct all splice work on CDOT owned facilities.
- d. Issue the applicable CDOT Region Utility Permit(s) within forty-five (45) days of receiving the Connexion's properly completed and compliant 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 Utility Permit(s) not possible within forty-five (45) days.
- e. Issue the applicable CDOT Region Maintenance Permit(s) within forty-five (45) days of receiving Company's properly completed and compliant application provided that no mitigating circumstances or other issues must be addressed thereby making issuance of said CDOT Region Maintenance Permit(s) not possible within forty-five (45) days.
- f. CDOT shall perform all applicable maintenance related activities on the CDOT owned fiber optic cables, including:
 - i. Routine Preventative Maintenance: Routine Preventative Maintenance, as applicable, shall at a minimum consist of, but not be limited to, periodic inspection of the project facility, including reinstallation of knocked down fiber location markers and replacement of damaged or missing fiber location markers, clearing and cleaning debris from the facility 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. CDOT shall supply materials such as, but not limited to, fiber location markers at its own expense and shall perform all necessary Route Preventative Maintenance at its own expense and shall not seek reimbursement for any and all costs associated with Route Preventative Maintenance performed.
 - ii. Registering the Project Facility: CDOT shall register or cause to be registered the project facility. CDOT shall be solely responsible to pay all costs to repair and/or replace the project facility due only to failure to perform locates, or to perform locates in a timely manner, resulting in damage and/or cutting or severing the fiber infrastructure in the project facility. CDOT shall not be responsible to register or cause to be registered any lateral conduit or fiber optic cable the other party installs, neither shall CDOT be responsible to pay for any costs to repair and/or replace any lateral conduit or fiber optic cable installed by the other party.

- iii. **Emergency and Extraordinary Repairs:** Emergency and Extraordinary Repairs shall mean repairs required as a result of the fiber optic cables in the project facility 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 project facility. CDOT's standard for restoral of outages and damages are best effort.
 - iv. **Scheduled Maintenance:** CDOT may need to conduct work that requires a scheduled outage of their fiber optic cable. In the event of a scheduled outage CDOT shall provide 3 days notice for any scheduled outage not to exceed 8 hours unless it is an emergency repair.
 - v. **Notification:** In the event that Emergency and Extraordinary Repairs are performed, the parties shall notify each other as soon as is reasonable and practicable, and shall make reasonable effort to notify each other while such Emergency and Extraordinary Repair is in progress. Notification shall include, to the extent practicable, the nature, location and duration of the Emergency and Extraordinary Repair. A telephone call followed by an email with an electronic receipt shall constitute acceptable notification.
 - vi. **Entering the Parties Pull Boxes:** For safety and security reasons CDOT, including but not limited to, CDOT's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter Connexion's labeled pull boxes, vaults and/or manholes without receiving written permission. For safety and security reasons Connexion including but not limited to, Connexion's employees, sub-contractors, agents, entities, affiliates, etc. shall NOT enter CDOT's pull boxes, vaults and/or manholes without receiving written permission. Written permission shall be acceptable in the form of email with an electronic receipt, except where entry is necessary to perform Emergency and Extraordinary Repairs.
 - vii. **Loss of Use:** Either Party's loss of use of the Project 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 Project Facility 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.
4. **Relocation:** Each Party recognizes that from time to time due to highway and/or transportation projects in the CDOT ROW, it may become necessary to relocate either a portion, or all, of the infrastructure installed as part of the properly executed Agreement. If such relocation becomes

necessary for whatever reason, CDOT shall be solely responsible for all costs incurred to relocate all CDOT infrastructure, except that CDOT shall not be responsible for any costs incurred to relocate all Connexion's infrastructure. To accomplish relocation of Connexion's infrastructure for which Connexion is solely and entirely responsible, Connexion shall have the following two (2) options:

- a. Hire a contractor to relocate Connexion's infrastructure in accordance with CDOT construction plans and schedules. Connexion shall direct such contractor to coordinate with the contractor CDOT hires to perform construction and relocation of the CDOT infrastructure to ensure that the Connexion's infrastructure is relocated in a coordinated manner and that the project is successfully completed.
- b. Authorize the contractor hired by CDOT to relocate Connexion's infrastructure in accordance with CDOT construction plans and schedules. Connexion shall be solely responsible to pay for all cost associated to relocate Connexion's infrastructure. Due to the vested interest that Connexion has in fiber infrastructure installed in the CDOT ROW, CDOT shall use commercially reasonable efforts to give Connexion notice of relocation as soon as CDOT becomes aware of such relocation and CDOT shall keep Connexion well informed throughout the entire relocation process, including but not limited to, development of relocation project plans and schedules. Also, CDOT shall give Connexion an official notice that identifies the schedule at least one hundred twenty (120) days prior to the commencement of such relocation project.

5. Payment

- a. Connexion shall make the first year's Total Annual Lease Payment as shown in Attachment A within thirty (30) days of the Effective Date. Connexion may pay the last year's Total Annual Lease Payment based on a prorated amount of the last year's annual lease payment corresponding from the anniversary of the Effective Date to the expiration date of this Lease Agreement.
- b. Connexion shall pay CDOT an annual lease payment for each subsequent year of the term of this Lease Agreement within thirty (30) days of the anniversary of the Effective Date. The annual lease payment shall automatically be increased by three percent (3%) each year after the first year. Connexion shall pay the Total Annual Lease Payment amount for each subsequent year of the Lease Agreement term as shown in Attachment A. Payments shall be made payable to CDOT at:

Colorado Department of Transportation
C/o Accounting Receipts & Deposits
2829 West Howard Place
Denver, CO 80204

Or at such place as CDOT from time to time designates by notice. In the event CDOT has not received the Total Annual Lease Payment hereunder within forty-five (45) days after said payment becomes due and owing, a late charge of five percent (5%) of that Total Annual Lease Payment shall be assessed to Connexion. If fees owed by Connexion are 90 days or more past due, CDOT may disconnect leased dark fibers with a minimum of thirty (30) days prior written notice.

EXHIBIT A , ATTACHMENT A

City of Fort Collins I-25 Fiber Lease Estimate - Project Road to FR GIGA Pop - One pair (2 fiber strands)										Annual Lease Payment																
Corridor Description	Begin Mile Point	End Mile Point	Fiber Lease Rate per Strand	Corridor Length	Corridor Priority Multiplier	Annual Index Increase Rate	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
I-25 From Prospect Road to Valpo St	209.2	208.2	\$1,750.00	0.9	1	3%	\$10,325	\$10,635	\$10,954	\$11,282	\$11,621	\$11,970	\$12,329	\$12,698	\$13,079	\$13,472	\$13,878	\$14,297	\$14,721	\$15,153	\$15,617	\$16,096	\$16,590	\$17,066	\$17,578	\$18,105
Valpo St			\$1,750.00	0.22	1	3%	539	540	541	542	543	545	546	547	549	550	552	553	555	557	558	560	562	564	566	568
BH Ave			\$1,750.00	0.06	1	3%	57	57	57	58	58	58	59	59	59	59	59	510	510	511	511	511	511	512	512	512
Wyandot St			\$1,750.00	0.21	1	3%	537	538	539	540	541	543	544	545	547	548	549	551	552	554	556	557	559	561	563	564
Yuma St			\$1,750.00	0.24	1	3%	542	543	545	546	547	549	550	552	553	555	556	558	560	562	564	565	567	569	572	574
12th Ave			\$1,750.00	0.1	1	3%	518	518	519	519	520	520	521	522	522	523	524	525	526	527	528	528	529	529	530	531
Umsvalla St			\$1,750.00	0.1	1	3%	518	518	519	519	520	520	521	522	522	523	524	525	526	526	527	528	529	529	530	531
13th Ave			\$1,750.00	1.17	1	3%	5205	5211	5217	5224	5230	5237	5244	5252	5259	5267	5275	5283	5292	5301	5310	5319	5329	5338	5349	5359
Barrock St			\$1,750.00	0.22	1	3%	539	540	541	542	543	545	546	547	549	550	553	553	555	557	558	560	562	564	566	568
14th Ave			\$1,750.00	0.45	1	3%	579	581	584	586	589	591	594	597	5100	5103	5106	5109	5112	5116	5119	5123	5126	5130	5134	5138
Champa St			\$1,750.00	0.1	1	3%	518	518	519	519	520	520	521	522	522	523	524	524	525	526	526	527	528	529	530	531
15th St			\$1,750.00	0.02	1	3%	54	54	54	54	54	54	54	54	54	55	55	55	55	55	55	55	55	55	56	56
Total Annual Lease Req*							\$10,827	\$11,152	\$11,487	\$11,831	\$12,186	\$12,552	\$12,928	\$13,316	\$13,716	\$14,127	\$14,551	\$14,987	\$15,437	\$15,900	\$16,377	\$16,869	\$17,375	\$17,896	\$18,433	\$18,986

* Estimate based on assumed path to 910 15th St. and could change after verifying exact route.

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option Contract Number Insert CMS number or Other Contract Number of this Option Contract Performance Beginning Date Month Day, Year Current Contract Expiration Date Month Day, Year

1. OPTIONS:

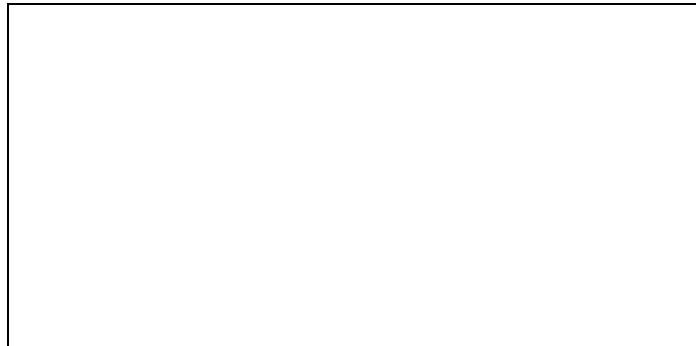
Option to extend for an Extension Term

2. REQUIRED PROVISIONS:

In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

3. OPTION EFFECTIVE DATE:

A. The effective date of this Option Letter is upon approval of the State or _____, whichever is later.



<p>CONTRACTOR City of Fort Collins Electric Utility Enterprise, dba Fort Collins Connexion</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p>
<p>By: _____, Enterprise Board President</p> <p>Date: _____</p>	<p>By: Stephen Harelson, P.E., Chief Engineer</p> <p>Effective Date: _____</p>