



E470SM

**PUBLIC HIGHWAY AUTHORITY
PERMIT MANUAL**

APRIL 2008

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In an effort to promote understanding and fewer misapprehensions, E-470 desires to characterize the nature of its E-470 Permit Manual and Topical Index to indicate the functions they perform. The E-470 Permit Manual, in addition to being a legal document, it is a collection of topics and terms which are the main regulative policies, principles and procedures of the E-470 Engineering and Maintenance Department as it relates to any Facility Improvement installation and maintenance in E-470 Property. This Topical Index is not intended to replace any language contained in the E-470 Permit Manual. The nature of the Topical Index is an index of topics to perform as a digest of the E-470 Permit Manual's central topics. A topic is a subject of Facility installation or maintenance concern.

The E-470 Permit Manual is a place at which minds meet to understand the position of E-470 as it relates to construction and maintenance policy and procedure, and to communicate common concerns. A number of topics have relevance to a common term (Example: repair or relocation), a single concept which generates a number of construction and maintenance policies and problems that causes the need for a definition or definite description. Hence, the E-470 Permit Manual defines terms, addresses problems, and regulates activity.

The Topical Index merely enumerates the topics with various particular points analyzed as to the content presented in the Manual. Many of the topics deserve a word of explanation to throw light on what to expect when reading the Manual. The Topical Index provides a sense of the scope and variety of subjects with which the E-470 Permit Manual deals with and is designed to help the reader use the references and to turn to the relevant pages in the E-470 Permit Manual. The Topical Index is constructed so that it permits the reader almost at a glance to follow the train of thought for any one of the topics.

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E-470 PUBLIC HIGHWAY AUTHORITY PERMIT MANUAL

1.00 GENERAL

1.01 Purposes

The purposes of this E-470 Permit Manual are to implement the Utility policies of the E-470 Public Highway Authority and to prescribe conditions under which Utilities and Surface Improvements (as hereinafter defined) may be accommodated, installed, adjusted, relocated or maintained within property owned by E-470 (the "E-470 Property"). E-470 Property includes property E-470 owns in fee ("Fee") and property in which E-470 owns an easement, including but not limited to a multi-use easement ("MUE"). The location or relocation of Utilities and Surface Improvements is governed by all applicable federal and state laws, federal and state regulations and the procedures as set forth herein.

1.02 Authorization

This E-470 Permit Manual is promulgated pursuant to the E-470 Public Highway Authority's broad grant of power to operate and maintain the E-470 Public Highway under Sections 43-4-501, et seq., C.R.S., the Public Highway Authority Law.

1.03 Definitions

The following definitions shall apply to the terms used in this Manual:

- a. **As-Built** – shall mean plans which conform to the As-Built Standards set out at Part 8.00 of this Manual and which accurately depict the constructed horizontal and vertical alignment of the Facility Improvement and are produced under the supervision of a Colorado registered land surveyor or engineer.
- b. **Clear Zone or Clear Recovery Area** – shall mean that portion of the roadside, within the Fee, free of nontransverseable hazards and fixed objects. The Clear Zone is an integral design feature of the E-470 Highway and is related to design speed, horizontal alignment and embankment slope. Utilities are to be located in a manner that preserves the measure of safety afforded by the Clear Zone. The Clear Zone width shall be established to avoid the need for traffic barriers as further defined in the AASHTO "Road Side Design Guide" (with current revisions), as it currently exists and as amended and updated by the AASHTO from time to time.
- c. **Common Use Agreement** – shall mean a written agreement between E-470 and a Facility Owner, which sets forth the specific conditions of joint occupancy and use of E-470 Property and the obligations of each party.
- d. **Construction Activities** – shall mean any activity that involves moving dirt, fences or signs.
- e. **Contractor** – shall mean any company or individual which has entered into a design/build or construction contract with E-470, pursuant to which the company or

individual has undertaken to negotiate with Facility Owners for the accommodation, installation, adjustment or relocation of facilities.

- f. **E-470** – shall mean the E-470 Public Highway Authority.
- g. **E-470 Highway** – shall mean the improvements comprising the E-470 Public Highway as currently existing and including any future expansion.
- h. **E-470 Permit Manual or Manual** – shall mean this E-470 Permit Manual, as the same may be amended from time to time, previously referred to as the Utilities Procedure Manual and the Facilities Improvement Manual.
- i. **E-470 Property** – shall mean the land owned, by easement or in Fee, or controlled by the E-470 Public Highway Authority, including without limitation the MUE and the Fee.
- j. **Facility Improvement** – shall mean any Surface Improvement or Utility Improvement.
- k. **Facility Owner** – shall mean any individual, public or private company, developer, political subdivision or Utility who owns or operates a Facility Improvement occupying or to be installed in, on, along, over, across, through or under E-470 Property.
- l. **Fee Line** – shall mean the boundary line between the Fee and the MUE or between the Fee and property owned by others.
- m. **Fee** – shall mean the land owned by E-470 in Fee simple at any given time.
- n. **Final Acceptance** – shall mean the form of approval granted by E-470 after all work authorized and required under the Permit has been completed to E-470's satisfaction and in accordance with all applicable laws, rules and regulations and E-470 has received As-Builts satisfactory to E-470.
- o. **Highway Structure** – shall mean any structure located in, on, along, over, across, through or under the Fee and constructed for the purpose of carrying water or vehicular, rail or pedestrian traffic over a depression, stream, obstacle, roadway, walkway or railroad.
- p. **Landscape Zone** – shall mean the portion of the MUE that is reserved for the accommodation of landscaping and which is generally the outer 25 feet of the MUE.
- q. **Longitudinal Utility Installation** – shall mean any Utility Improvement placed in, on, over, along, across, through or under E-470 Property generally parallel to the mainline of the E-470 Highway.
- r. **MUE** – shall mean the land on which E-470 owns, at any given time, an easement, generally located adjacent to the Fee, and generally designated for slope construction, drainage structures, access control, sight distance control, multi-use trails, and accommodation of Facility Improvements.

- s. **Person** – shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity of any type whatsoever. Person shall not mean a person who uses the E-470 Public Highway solely for transportation purposes.
- t. **Permit or E-470 Permit** – shall mean either an E-470 Construction Permit/Permit to Occupy, E-470 Construction Permit or an E-470 Access Permit (all as more particularly described in Part 2.00 of this Manual and in the form attached hereto as Appendix C) as the context may require.
- u. **Stormwater** – shall mean stormwater runoff, snow melt runoff and surface runoff and drainage.
- v. **Surface Improvement** – shall mean any landscaping, change to existing grade, irrigation or authorized surface use, other than a Utility Improvement, installed or maintained by any Facility Owner.
- w. **Surface Improvement Owner** – shall mean any individual, public or private company, developer or political subdivision who owns or operates a Surface Improvement occupying or to be installed in, on, along, over, across or through E-470 Property.
- x. **Transverse Crossing** – shall mean any Facility Improvement placed in, on, over, along, across, through or under E-470 Property, generally perpendicular to the mainline of the E-470 Highway.
- y. **Unsatisfactory Work** – shall mean work that does not conform to the requirements of this Manual, or does not conform to the requirements and conditions contained in the Person's Permit.
- z. **Utility or Utilities** – shall mean any public or private communication, electric, light, power, gas, sanitary sewer, water or other pipeline company, developer or political subdivision authorized to do business under the laws of Colorado, which owns or operates a Utility Improvement occupying or to be installed in, on, along, over, across, through or under E-470 Property.
- aa. **Utility Improvement** – shall mean any pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances, or connections thereto, installed or maintained by any Utility for the purpose of transporting, transmitting, furnishing and/or distributing hydrocarbons and the products thereof, electric power and energy, communications including telecommunications, water, steam, chemicals and/or sewage.
- bb. **Utility Zone** – shall mean that the portion of the MUE that is reserved for accommodation of utilities and which is generally 50 feet in width and nearest to the Fee.

1.04 E-470 Resolutions Regarding Facility Owner's Use of E-470 Property

The Board of Directors of E-470 has passed several resolutions establishing E-470's policy regarding use of E-470 Property for Utilities and other Facilities. Resolutions pertaining to the subject of this Manual include, but are not limited to:

- Resolution 00-05 Regarding the Adoption of the Utility, Telecommunication and Cable Facility Crossing and Relocation Policies of the E-470 Public Highway Authority (attached hereto and incorporated herein as Appendix A-1)
- Resolution 02-06 Regarding Accommodation of Utilities in the Right-of-Way (attached hereto and incorporated herein as Appendix A-2)
- Resolution 02-07 Regarding the Adoption of the E-470 Multi-Use Easement Landscape and Improvements Policy of the E-470 Public Highway Authority (attached hereto and incorporated herein as Appendix A-3)
- Resolution 04-01 Establishing a Policy Regarding Trespassers (attached hereto and incorporated herein as Appendix A-4)
- Resolution 04-04 Establishing a Policy Prohibiting Discharge of Non-Stormwater into Storm Sewer System (attached hereto and incorporated herein as Appendix A-5)
- Resolution 05-01 Regarding Interchange and Transverse Roadway Grade Separation Locations (attached hereto and incorporated herein as Appendix A-6)
- Resolution 05-04 Concerning Charges for Use of Authority Property (attached hereto and incorporated herein as Appendix A-7)

1.05 Applicability

This E-470 Permit Manual establishes uniform criteria and procedures governing the location, design and methods for installing, adjusting, accommodating, maintaining and relocating Facility Improvements, including Utility Improvements, on E-470 Property.

The provisions of this Manual shall apply to all publicly, privately, cooperatively, municipally or governmentally owned Facility Improvements that are to be accommodated, adjusted, relocated, installed or maintained within E-470 Property, including:

- a. New Facilities to be installed in, on, along, over, across, through or under E-470 Property.
- b. Existing Facility Improvements presently occupying E-470 Property, including reconstruction, maintenance, modification, adjustment or relocation of existing Facility Improvements.

Where laws, rules, regulations or orders of any public agency or governmental authority or industry codes prescribe more stringent requirements than provided by the provisions of this Manual, such laws, rules, regulations, orders or codes shall prevail.

When circumstances are encountered which make the literal application of the Manual requirements impossible or impractical, alternate proposals may be submitted in writing by a permit applicant to E-470 for consideration. The Executive Director may waive provisions of this Manual, upon receiving such written proposal, if he or she determines that literal application of the Manual requirements is impossible or impractical and that variance from the Manual requirements will not adversely impact operation or maintenance of the E-470 Highway.

2.00 PROCEDURES FOR GRANTING AND CONDITIONS ON SUCH GRANTS OF ACCESS TO E-470 PROPERTY

2.01 Common Use Agreement, Permit or Other – When Required

No Facility Improvement may be installed or accommodated on, along, over, across, through or under E-470 Property unless the Facility Owner has been granted an E-470 Permit or has entered into a Common Use Agreement with E-470 permitting the Facility Improvement.

No Person may engage in construction activities on E-470 Property unless the Person has been granted an E-470 Construction Permit or has entered into a Common Use Agreement with E-470 permitting the Facility Improvement.

No Person may engage in any activity on E-470 Property that will affect the movement of traffic or traffic safety unless the Person has been granted an E-470 Construction Permit or has entered into a Common Use Agreement with E-470 permitting the Facility Improvement.

Before approving any permit or agreement authorizing use or occupancy of E-470 Property by a Facility Improvement, E-470 shall determine that a basis exists for such use or occupancy.

Except for Persons that are parties to Common Use Agreements or Persons holding an E-470 Permit, no Person may access E-470 Property for any purpose unless the Person has provided notice to E-470 in compliance with this Manual.

a. Common Use Agreements – Existing Utility Facilities

In the event of any future acquisition of property by E-470, if a Utility holds a Fee interest, an easement or other real property interest which will not be acquired or otherwise extinguished in connection with E-470's acquisition of E-470 Property, E-470 and the Utility shall enter into a Common Use Agreement setting forth the specific conditions of occupancy and the obligations of each party. The Common Use Agreement may be in the form shown in Appendix B hereto, but may be modified if necessary to be mutually acceptable to both parties. The manner of joint occupancy under such agreement shall conform to the general provisions of this Manual.

When Utility Improvement occupancy is by virtue of a Common Use Agreement, the agreement must provide for concurrence by E-470 with the manner in which the

Utility accomplishes subsequent maintenance, repairs, adjustments or relocations of its Utility Improvements.

b. Construction Permit / Permit to Occupy

Any Person that desires to install a Facility Improvement in, on, along, over, across, through or under E-470 Property must apply to E-470 for an E-470 Permit. No such Person may install a Facility Improvement unless and until the Person has obtained an E-470 Construction Permit/Permit to Occupy setting forth the specific conditions on and obligations of the permittee. The Permit shall be substantially as the form shown in Appendix C hereto. This Section shall not apply to: 1) Utilities described in Section 2.01(c); or 2) Utilities that are parties to existing common use agreements.

c. Construction Permit – Construction

Any Person that desires to engage in construction activities, other than installing a Facility Improvement, in, on, over, across, through or under E-470 Property must apply to E-470 for an E-470 Construction Permit. No such Person may construct on E-470 Property unless and until it has obtained an E-470 Construction Permit setting forth the specific conditions on and obligations of the permittee. The Construction Permit shall be substantially in the form shown in Appendix C hereto. This Section shall not apply to any Person that: 1) has already entered into a common use agreement to the extent this provision is inconsistent with the express provisions of said common use agreement; or 2) any Person desiring to install a Facility Improvement (that Person must apply for an E-470 Construction Permit/Permit to Occupy as required by Section 2.01(b)).

d. Construction Permit – Activities Affecting Traffic

Any Person that desires to engage in activities in, on, over, across, through or under E-470 Property that will affect the movement of traffic or traffic safety must apply to E-470 for an E-470 Construction Permit. No such Person may engage in any activity on E-470 Property unless and until it has obtained an E-470 Construction Permit setting forth the specific conditions of occupancy and the obligations of the permittee. The Construction Permit shall be substantially in the form shown in Appendix C hereto. This Section shall not apply to any Person that: 1) has already entered into a common use agreement to the extent this provision is inconsistent with the express provisions of said common use agreement; or 2) any Person desiring to install a Facility Improvement (that Person must apply for an E-470 Construction Permit/Permit to Occupy as required by Section 2.01(b)).

e. Access Permit

Any Person that desires access to E-470 Property other than those described in Sections 2.01(a)-(d) must apply to E-470 for an E-470 Access Permit. E-470 Access Permits may include:

1. Annual Access Permit—Pursuant to Agreement

An Annual Access Permit may be granted to a Person pursuant to an agreement between the Person and E-470 which agreement explicitly provides for the granting of an annual access permit. Permittee shall be permitted to perform routine or periodic maintenance or emergency repairs which include repair or replacement of fuses, breakers, connector and/or insulators. Routine or periodic maintenance or emergency repairs shall not include wire replacement other than overhead lines and any activity that will affect the movement or safety of traffic or involves any movement of dirt, fences, signs or other items. In the event that the Permittee wishes to engage in any activity not permitted under the Annual Access Permit, the Permittee shall seek a separate E-470 Construction Permit. The Annual Access Permit shall be substantially in the form shown in Appendix C hereto.

2. Annual Access Permit—Other

An Annual Access Permit may be granted to a Person under such circumstances and for such reasons as E-470 determines are in the best interest of E-470. Permittee shall be permitted to perform routine or periodic maintenance or emergency repairs which include repair or replacement of fuses, breakers, connector and/or insulators. Routine or periodic maintenance or emergency repairs shall not include wire replacement other than overhead lines and any activity that will affect the movement or safety of traffic or involves any movement of dirt, fences, signs or other items. In the event that the Permittee wishes to engage in any activity not permitted under the Annual Access Permit, the Permittee shall seek a separate E-470 Construction Permit. The Annual Access Permit shall be substantially in the form shown in Appendix C hereto.

3. Access Permit

An Access Permit may be granted to any Person who desires access to E-470 Property but who has not been issued an Annual Access Permit. The Access Permit shall be substantially in the form shown in Appendix C hereto.

2.02 Trespassing on E-470 Property

- a. No Person, except for a law enforcement agent, emergency services agent or Contractor acting in the course of its duties, shall be allowed on E-470 Property for any purpose other than transportation unless such Person is installing a Facility Improvement under a valid Permit in such Person's possession or such Person has a valid Construction Permit in his possession, has an Access Permit in his possession or has obtained the E-470 Permit Coordinator's permission. Any such Person without such permission or not possessing such a valid, current permit may be deemed a trespasser.
- b. The above provision notwithstanding, in the event of an emergency, a Facility Owner, or an authorized agent thereof, may enter E-470 Property, without a valid permit or agreement authorizing such entry, for the limited purpose of remedying the emergency, provided that the Facility Owner shall first notify E-470's Command

Center by telephone ((303) 537-3400) and that it shall provide a written report of the emergency within seventy-two (72) hours thereafter to E-470.

- c. The Executive Director of E-470, or his or her designee, is authorized under E-470 policy to take any of the following actions, in his or her discretion, against a trespasser:
 - 1. Issue a written warning explaining the requirement to obtain a permit/permission before entry onto E-470 Property.
 - 2. Issue an order to cease and desist trespassing or cease the performance of any activity on E-470 Property and to immediately exit E-470 Property.
 - 3. Impose a fine in an amount no greater than twice the amount of the applicable permit fee (for obtaining required Permit) per unauthorized entry, based on the totality of the circumstances including the danger to E-470 Highway users and whether the trespassing individual, or other persons employed by the individual's employer, has trespassed on E-470 Property before.
 - 4. Contact law enforcement agents and request that the trespasser be prosecuted for third degree criminal trespass and any other relevant criminal offenses.
 - 5. Commence a civil action.
- d. E-470 may remove any unauthorized work or improvements installed by a trespasser, at the trespasser's expense. E-470 may also bar a trespasser from any entry onto E-470 Property until it has paid all imposed fines and any expenses related to the removal of unauthorized work.
- e. If the individual trespasser is an agent, employee, officer, contractor or subcontractor of a Facility Owner or of a Facility Owner's contractor, E-470 may also impose a fine against the Facility Owner and/or the contractor in an amount no greater than twice the amount of the applicable permit fee (for obtaining required Access Permit or Construction Permit) per unauthorized entry. E-470 may bar the Facility Owner and/or contractor from entering E-470 Property until it has paid all imposed fines and has applied for and received a valid Construction Permit or Access Permit.
- f. An individual, Facility Owner or Facility Owner's contractor may appeal the imposition of a trespassing fine by filing a letter of protest with E-470 at the address listed below, which letter must be received by E-470 within thirty (30) days of the fine being imposed. The protest must be mailed to:

E-470 Public Highway Authority
Attn: Permit Coordinator
22470 E. 6th Parkway
Suite 100
Aurora, Colorado 80018

- g. Upon timely filing of a protest letter, the individual, Facility Owner or Facility Owner's contractor shall be entitled to a hearing before the Director of Roadway and Land Management of E-470, or his or her designee, regarding the imposition and amount of the fine. The Director of Roadway and Land Management of E-470, or his or her designee, may affirm, reverse or modify the fine imposed.
- h. The individual, Facility Owner or Facility Owner's contractor may then file a written appeal of the decision of the Director of Roadway and Land Management with the Executive Director of E-470 within thirty (30) days of the date of the decision. If no such written appeal is filed, the decision of the Director of Roadway and Land Management shall be final. If a timely appeal is filed, the Executive Director or his or her designee may affirm, reverse or modify the decision and the Executive Director's or his or her designee's decision shall be final.

2.03 Permit Fees – When Required

- a. The Executive Director of E-470 or his or her designee shall charge and collect a permit fee of \$75,000 per acre for use of E-470 Property for a Utility Improvement or Surface Improvement, except that such permit fee shall not apply to Surface Improvements consisting of landscaping only. The permit fee shall be collected consistent with Resolution 02-06 (Appendix A-2) and Resolution 05-04 (Appendix A-7).
- b. Where the Executive Director is required to charge and collect a permit fee of \$75,000 per acre, the Executive Director is hereby authorized to accept materials/services and/or other things of value to E-470 in lieu of cash payment from a Surface Improvement Owner up to an amount equal to the level of the Executive Director's spending authority, as such authority has been delegated by the Board of Directors of E-470 and as the Board of Directors may increase the same from time to time.
- c. Upon written application to the Director of Engineering and Maintenance by a Person wishing to use E-470 Property for a Surface Improvement, and upon recommendation by the Director of Engineering and Maintenance, the Executive Director may, in his or her discretion, waive or partially waive the permit fee due E-470 for use of E-470 Property for purposes other than Utility Improvements, such purposes to include by way of illustration but not limitation: grading for drainage purposes, installing drainage improvements, widening of cross streets and erecting temporary traffic control devices; when, and if, the Executive Director determines such waiver is merited.
- d. The Executive Director shall consider the following, non-exclusive factors when determining whether to waive a permit fee for a Surface Improvement:
 - 1. Whether installation of the Surface Improvement increases the value of E-470 Property or, in the determination of the Executive Director, provides a benefit to E-470 or users of the E-470 Highway;

2. Whether installation of the Facility Improvement performs work deemed necessary by E-470 or a Contractor for future expansion or use of the E-470 Highway; and
3. Whether installation of the Facility Improvement is compatible with use by E-470 and poses no risk of danger to travelers on the E-470 Highway.

2.04 Administrative Review Fees – When Required

- a. E-470 shall charge and collect from Persons applying for permits to use E-470's Property, for any use including without limitation landscaping, an administrative review fee in an amount to be determined by the Executive Director, which is in addition to the permit fee, if any.
- b. Upon written application to the Director of Engineering and Maintenance by a Person wishing to use E-470 Property for a Surface Improvement, and upon recommendation by the Director of Engineering and Maintenance, the Executive Director may waive or partially waive the administrative review fee due E-470 for reviewing applications to use E-470 Property for purposes other than Utility Improvements, such purposes to include by way of illustration but not limitation: erecting temporary traffic control devices, when, and if, the Executive Director determines such waiver is merited.

2.05 Insurance / Bonding Requirements

- a. E-470 requires a Certificate of Insurance and a Payment and Performance Bond, (where required by permit or agreement) prior to authorizing commencement of any work on E-470 Property.
- b. Permittee and its contractor(s) shall procure, at their own expense, and maintain for the duration of the work period, the following minimum insurance coverage:
 1. General Requirements. Permittee shall acquire and maintain in full force and effect, during the entire term of the Permit, including any extensions hereof, and at any time thereafter necessary to protect E-470, its directors, employees, agents, consultants and Permittee from claims that arise out of or result from the operations under the Permit by Permittee or any of its subcontractors or material suppliers, agents or employees or anyone acting on the Permittee's behalf or for which Permittee may be liable, the coverages set forth in Section 2.05(b)(2). All insurance is to be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted by E-470. Permittee's insurance shall provide that the insurer will give E-470 sixty (60) days written notice prior to the cancellation or material modification of any policy of insurance obtained to comply with this Section 2.05.

2. Minimum Insurance Coverages:

- i) Workers' compensation insurance in accordance with applicable law, including employers' liability with minimum limits of \$100,000 each accident, \$500,000 Disease-Policy Limit, \$100,000 Disease each employee.
- ii) Commercial general liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each occurrence; \$2,000,000 general aggregate, and \$1,000,000 products and completed operations aggregate. Coverage shall be on an ISO 1996 Form (CG 0001 or equivalent), include all major divisions of coverage and be on a comprehensive basis, including:
 - a) Premises and operations;
 - b) Personal injury liability;
 - c) Contractual liability
 - d) Property damage;
 - e) Products and completed operations;
 - f) Independent contractors coverage;
 - g) Explosion, collapse and underground (for contractors only);
 - h) Contractors' limited pollution coverage (for contractors only); and
 - i) Endorsement CG 2-503 or equivalent; general aggregate applies on a per project basis (for contractors only).
- iii) Commercial automobile liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each accident covering owned, leased, hired, non-owned, and employee non-owned vehicles used at the Permit site.
- iv) Professional Liability – coverage in the amount of \$1,000,000 each claim and in the aggregate covering the negligent acts or omissions of the Consultant and/or its subcontractors in the performance of the Services (for professionals only).
- v) Excess Liability Coverage – Liability coverage inclusive of general liability, automobile liability and employers liability in the amount of at least \$5,000,000 combined single limit bodily injury and property damage, each occurrence: and \$5,000,000 in the aggregate. Separate aggregates need to be structured as found in the underlying coverages.
- vi) All coverages specified herein shall waive any right of subrogation against the Authority and its directors, officers and employees.

3. Additional Insured Parties. All policies (with the exception of workers' compensation and professional liability insurance) shall insure the interest of the Authority and its respective directors, officials, employees, agents, and consultants.

4. Certificates of Insurance. Prior to commencing any work under the Permit, the Permittee shall provide the Authority with a certificate or certificates evidencing the coverages identified on the face of the certificate with the Permit number for this Permit, the name of the project and a copy of the additional insured endorsement. If the Permittee subcontracts any portion(s) of the work, such subcontractor(s) shall be required to furnish certificates evidencing workers' compensation and employers' liability insurance coverage, commercial general liability insurance coverage and automobile liability insurance coverage, in amounts satisfactory to E-470 and the Permittee and containing the "additional insured", "waiver of subrogation" and "cancellation" conditions found in this Section 2.05. If the coverage required expires during the term of the Permit, the Permittee and its subcontractor(s) shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.
5. Additional Provisions. Each general liability policy and, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:
 - i) Permittee's insurance coverage shall be primary insurance with respect to the Authority and its directors, officers and employees. Any insurance maintained by the Authority (or its directors, officers and employees) shall be in excess of the Permittee's insurance and shall not contribute to it.
 - ii) Permittee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.
6. Failure to Comply with Reporting Provisions. Any failure on the part of the Permittee to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Permittee to provide the required coverage to the Authority and its directors, officers and employees.
7. Claims-Made Policies. If any policy is a claims-made policy, the policy shall provide the Permittee the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two years. Permittee agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. Permittee's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under the Permit. If the policy is a claims-made policy, the retroactive date of any such policy shall be not later than the date this Permit is executed by the parties hereto. If the Permittee purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Permit is executed by the parties hereto.
8. No Limitation on Other Obligations. The procuring of required policies of insurance shall not be construed to limit the Permittee's liability hereunder or to

fulfill the indemnification provisions and requirements of this Permit. Permittee shall be solely responsible for any deductible losses under the policy.

9. Additional Risks and Hazards. If the Authority requests in writing that insurance for risks other than those described herein or for other special hazards be included in property insurance policies, Permittee shall obtain such insurance, if available, in a form and for a cost approved by the Authority, and the cost thereof shall be charged to the Authority.

2.06 Indemnification of E-470

It is the policy of E-470 to obtain indemnification from all Persons who enter on to E-470 Property, including but not limited to Facility Owners, stating the following:

“Permittee shall indemnify, defend and hold harmless E-470 and each of the governmental entities that is now or may in the future become a party to E-470’s Establishing Contract, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys’ fees), and liabilities, of, by or with respect to third parties (“any claims”) to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee or any of its subcontractors or material suppliers, agents or employees, in connection with the Permit and/or the Permittee’s work hereunder. Further, the Permittee hereby agrees to indemnify, defend and hold harmless E-470 and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys’ fees) and liabilities of, by or with respect to, third parties (“any claims”), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee, its employees, subcontractors, material suppliers or agents or employees, or the agents or employees of any subcontractors or material suppliers which causes or allows to continue a condition or event which deprives E-470 or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Nothing in the Permit or in any actions taken by E-470 pursuant to the Permit shall be deemed a waiver of E-470’s sovereign immunity under the Colorado Governmental Immunity Act. Provided, however, that such Permittee shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of E-470, its directors, employees, agents and consultants. The obligations of the indemnifications extended by the Permittee to E-470 under the Permit shall survive termination or expiration of the Permit.

Permittee’s defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in the Permit shall be construed as requiring the Permittee to defend in litigation, indemnify or insure E-470 against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of E-470 or any third party under the control or supervision of E-470.”

This indemnification shall be enforceable irrespective of whether E-470 shall have approved, either express or implied, the design, construction, installation, operation, maintenance or repair of such Facility Improvements within E-470 Property.

2.07 Considerations Regarding Which Facility Improvements will be Permitted

a. Utility Installations

1. E-470 may permit Utility Installations in, on, over, along, across, through or under E-470 Property only upon a showing by the Utility that the following conditions can be met:
 - i. The Utility Installation accommodation will not adversely affect the safety, design, construction, operation, maintenance or stability of the E-470 Highway;
 - ii. The Utility Installation will not be constructed and/or serviced by direct access from the through traffic roadways or connecting ramps; and
 - iii. The Utility Installation accommodation will not interfere with or impair the present use or further expansion of the E-470 Highway.
2. Except as authorized by E-470, the only access to a Utility shall be via existing cross streets.
3. Permits for Longitudinal Utility Installations shall include conditions for policing, emergency procedures and other controls as may be necessary to protect the E-470 Highway users.

b. Landscaping in Multi-Use Easement

In certain locations, E-470 acquired an MUE adjacent to Fee for current and future slope construction, drainage structures, multi-use trails, access control, sight distance control, right of access, as well as installation, construction, reconstruction, relocation, maintenance and enlargement of utilities. In general, the entire MUE is reserved for slope construction, drainage structures, access control and sight distance control. In general, a contiguous fifty (50) feet of the MUE nearest the Fee is reserved for accommodation of utilities ("Utility Zone") and the outer twenty-five (25) feet of the MUE is reserved for multi-use trail construction and/or landscaping ("Landscape Zone"). Surface Improvements shall not interfere with potential uses by E-470.

The following permitted landscape improvements will be allowed within the MUE and are listed to provide guidance concerning the types of improvements that will not interfere with E-470 uses of the MUE.

1. Within the Utility Zone:
 - i. Landscaping shall consist of native grasses and drought tolerant shrubs.
 - ii. Irrigated grasses and shrubs are allowed if irrigated by systems constructed outside of the Utility Zone.
 - III. Irrigation trunk service lines will be allowed to cross the Utility Zone.
2. Within the Landscape Zone:
 - i. Landscaping may consist of all grasses, shrubs and trees.
 - ii. Irrigation systems are allowed.
 - iii. Paved parking may be permitted in the cross street MUE, if there is no interference with the design or placement of multi-use trail, future slope, drainage structure construction or retaining walls.

No structures, except for authorized utility improvements, shall be placed or constructed within E-470 Property. All Surface Improvements (including landscaping) within the MUE are allowed only pursuant to a Construction Permit/Permit to Occupy. Any Surface Improvements shall conform to the regulations and ordinances of the local jurisdiction. Provision for equestrian use of the multi-use trail may require modification of the general location of the multi-use trail. E-470, upon written application, may consider exceptions to the landscaping policy, as set forth in Resolution 02-07 (Appendix A-3) and this Section 2.07.

c. Aesthetics and Scenic Areas

The type and size of Facility Improvements and the manner and extent to which they are permitted, subject to all applicable E-470 policies, along or within E-470 Property can materially alter the scenic quality, appearance and view of E-470 Highway roadsides and adjacent areas. For these reasons additional controls are applicable in certain areas which have been acquired or set aside by E-470 for their scenic quality ("Scenic Areas").

1. New underground Utility Improvements or Facility Improvements may be permitted within Scenic Areas where they do not require extensive removal or alteration of trees or other natural features visible to the E-470 Highway user or do not impair the visual quality of lands being traversed.
2. New aerial installations are allowed only where permitted by E-470.
3. On portions of the E-470 Highway, which are not otherwise deemed to require special attention to aesthetics, the Facility Improvements shall not unreasonably detract from the scenic or aesthetic qualities inherent to the E-

470 Highway. Facility Improvements are encouraged, whenever practicable, to explore alternative methods and types of installations which may enhance the aesthetic qualities of the E-470 Highway and its surroundings.

4. Trees and other landscaping elements located within the Fee shall not be disturbed unless specific written permission, clearly defining the allowable extent of such activities, is granted by E-470.

3.00 FACILITY IMPROVEMENT RELOCATIONS

3.01 When Relocations shall Occur

If E-470 shall deem it necessary and/or desirable to change, construct, reconstruct or otherwise use for E-470 Highway purposes, the premises occupied by Facility Improvements, or any portion thereof, and such change, construction, reconstruction or usage shall necessitate changes in Facility Improvements, the Facility Owner shall make the necessary changes and the costs thereof shall be paid in accordance with applicable law and the conditions of any current Common Use Agreement or permit.

3.02 Reimbursement

a. Eligibility for Reimbursement

This Section sets forth the eligibility by Facility Owners for reimbursement of costs incurred when it is necessary to relocate, adjust or remove Facility Improvements in order to avoid conflict with E-470 Highway requirements. Such Facility Owners will be eligible for reimbursement for the cost of acquiring replacement right-of-way and relocation costs, as set forth in this Section 3.03, only if a standard utility relocation agreement (see Appendix D) has been signed by E-470 and/or Contractor and the Facility Owner and as follows:

1. The Facility Owner had a compensable right-of-way which was acquired prior to the date of E-470's possession or ownership of E-470 Property and the Facility Owner was never compensated or provided with a substitute right-of-way; or
2. The Facility Improvements are occupying E-470 Property under the terms of a Common Use Agreement, the Construction Permit shall be substantially in the form shown in Appendix C hereto which provides for reimbursement in recognition of Facility Owner's pre-existing right-of-way; or
3. The Facility Improvements exist to serve an E-470 Highway purpose (e.g. E-470 lighting) in which case the cost of adjustments may be considered a cost of E-470 Highway construction.
4. Notwithstanding any other provision to the contrary, in the event E-470 requires relocation of any water, sewer or storm drainage Facility Improvement owned and installed on E-470 Property by a Member Entity or a Related Entity (as defined in Resolution 02-06 (Appendix A-2), E-470 and the Member Entity

shall equally share the relocation costs, pursuant to a standard utility relocation agreement.

Except as expressly stated above, a Facility Owner shall be responsible for costs of relocating its Facility Improvements, including without limitation, the costs to acquire additional easements, for all relocations, including future relocation necessitated by the widening or other improvement of the E-470 Highway. In no event shall E-470 pay relocation costs for a Facility Improvement which prior to the acquisition of E-470 Property occupied a public right-of-way, including by way of illustration and not limitation, a public road, street, alley or other public way.

b. Standard Utility Relocation Agreement

The standard utility relocation agreement establishes the work to be performed, estimated cost, basis of payment, eligibility for reimbursement and other terms and conditions as dictated by fiscal practice and this Manual. Minor revisions to the standard utility relocation agreement may be utilized to fit individual circumstances.

c. Definitions.

For the purpose of this Section 3.02, the following definitions shall apply:

1. **Betterment** – any upgrading of the Facility Improvement being relocated that is not attributable to E-470 Highway construction and is made solely for the benefit of and at the election of the Facility Owner.
2. **Indirect and Overhead Costs** – those costs which are not readily identifiable with one specific task, job or work order. Such costs may include indirect labor, social security taxes, insurance, storage expenses and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable and in accordance with generally accepted cost accounting practices.
3. **Relocation** – the adjustment of Utility Improvements required by construction, expansion, modification, operation or maintenance of the E-470 Highway. It includes removing and reinstalling the Facility Improvement, including necessary temporary Facility Improvements, acquiring necessary new location within E-470 Property, moving, rearranging or changing the type of existing Facility Improvements and taking any necessary safety and protective measures. It shall also mean constructing a replacement Facility Improvement that is both functionally equivalent to the existing Facility Improvement and necessary for continuous operation of the service provided by the Facility Owner or necessary for the sequence of E-470 Highway construction, expansion, modification, operation or maintenance.
4. **Relocation Costs** – the entire amount paid by or on behalf of the Utility properly attributable to the Relocation after deducting from that amount any

value of any Betterment and any salvage derived from the old Facility Improvement. Such costs may include the acquisition of replacement right-of-way, preliminary engineering and allied services and the physical construction work.

5. **Removal Costs** – the amount expended to remove Utility property including the cost of demolishing, dismantling, removing, transporting or otherwise disposing of the Facility Owner's property and of cleaning up to leave the site in a neat and presentable condition.
6. **Salvage Costs** – the amount expended to restore salvage Facility property to usable condition after its removal.
7. **Salvage Value** – the amount received from the sale of Facility property that has been removed or the amount at which the recovered material is charged to the Facility Owner's accounts, if retained for reuse, minus Salvage Costs.
8. **Site Restoration** – the amount expended to reseed and re-landscape the areas of E-470 Property disturbed by the relocation.
9. **Work Order System** – a procedure for accumulating and recording into separate accounts of a Facility Owner all costs to the Facility Owner in connection with any change in its system or plant.

d. Replacement Right-of-Way

Where a Facility Owner is entitled to reimbursement in accordance with Section 3.02(a) of this Manual, the Facility Owner may be reimbursed for the cost of obtaining a replacement right-of-way or easement. Acquisition of replacement right-of-way or easement may be performed by the Facility Owner, with proper cost justification if reimbursable, or by E-470 on behalf of the Facility Owner, based on practical or economic considerations. Upon request by E-470, the Facility Owner shall determine and make a written evaluation of the replacement right-of-way in order to justify amounts paid for such right-of-way.

In any case, there must be no charge to E-470 for that portion of the Facility Owner's existing right-of-way being acquired for E-470 Highway purposes.

e. Facility Improvement Relocation by E-470 Contractor

In certain instances, it is most economical, expeditious and in the best interest of all parties involved to have the necessary Facility Improvement Relocation physical work performed by a common contractor. In these instances, the Contractor will provide reimbursement to the Facility Owner for Relocation Costs as defined in the standard utility relocation agreement (see Appendix D) or a contractor adjusted utility agreement (see Appendix E) and in compliance with terms and conditions of the contract between E-470 and the Contractor.

If the Relocation agreement is signed by E-470, the Contractor shall execute a letter agreement assuming the obligations of the Relocation agreement.

f. Preliminary Engineering

1. Preliminary engineering activities associated with Facility Improvement Relocation work may be done by:
 - i. The engineering forces of E-470, the Contractor or the Facility Owner; or
 - ii. An engineering consultant selected by E-470 after consultation with the Facility Owner, the contract to be administered by E-470 or the Contractor; or
 - iii. An engineering consultant selected by the Facility Owner, with the approval of E-470, the contract to be administered by the Facility Owner.
2. The costs for preliminary engineering activities shall generally be reimbursed pursuant to a standard utility relocation agreement. If the engineering is performed by E-470 or its Contractor, a contractor adjusted utility agreement shall be used instead of a standard utility relocation agreement.

g. Cost Development

1. Developing and Recording Costs
 - i. All Facility Improvement Relocation Costs shall be recorded by means of work orders in accordance with an approved Work Order System except when E-470 has approved another method of developing and recording costs, such as a lump-sum agreement.
 - ii. Each Facility Owner shall keep its Work Order System or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement or removal from a Facility Improvement, the total costs thereof and the source(s) of costs. Separate work orders may be issued for additions and retirements or removals. Retirements or removals, however, may be included with the construction work order provided that all items relating to retirements or removals shall be kept separately from those relating to construction.
2. Direct Labor Costs
 - i. Salaries and wages, at actual or average rates, and related expenses paid by the Facility Owner to individuals for the time worked on the project, are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, fee and force account construction.

- ii. Salaries and expenses paid to individuals who are normally part of the overhead organization of the Facility Owner may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.
- iii. Amounts paid to engineers, architects and others for services directly related to the project may be reimbursed.

3. Labor Surcharges

- i. Labor surcharges include worker compensation insurance, public liability and property damage insurance and such fringe benefits as the Facility Owner has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual costs to the Facility Owner, or, at the option of the Facility Owner, average rates which are representative of actual costs may be used in lieu of actual costs if approved by E-470. These average rates shall be adjusted at least once annually to take into account known or anticipated changes and to correct for any over or under applied costs for the preceding period.
- ii. When the Facility Owner is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

4. Indirect and Overhead Costs

- i. Indirect and Overhead Costs not charged directly to work order or construction accounts may be allocated to the Relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be reasonable and actually incurred by the Facility Owner.
- ii. Costs not eligible for reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying and research programs.
- iii. The records supporting the entries for Indirect and Overhead Costs shall show the total amount, rate and allocation basis for each additive and shall be subject to audit by E-470 representatives.

5. Materials and Supplies Costs

- i. Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the Facility Owner's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The Facility Owner shall not be required to change its existing standards for materials used in permanent changes to its Facility Improvements. Costs shall be determined as follows:
 - (a) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.
 - (b) Materials and supplies not furnished from company stock shall be billed at actual costs to the Facility Owner for delivery to the project site.
 - (c) A reasonable cost for plan inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates and allowances.
 - (d) The cost of rehabilitating rather than replacing existing Facility Improvements to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.
- ii. Materials recovered from temporary use and accepted for reuse by the Facility Owner shall be credited for the project at prices charged to the job, less a consideration for loss in service life at ten (10) percent. Materials recovered from a permanent Facility Improvement that are accepted by the Facility Owner for return to stock shall be credited to the project at the current stock prices of such used materials. E-470 or Facility Owner following an appropriate solicitation for bids shall sell materials recovered and not accepted for reuse by the Facility Owner to the highest bidder, if the materials are determined to have a net sale value. If the Facility Owner practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the Facility Owner.
- iii. When the Facility Improvements can be abandoned in place but the Facility Owner or Contractor elects to remove and recover the materials, E-470 will not participate in Removal Costs.

- iv. The actual and direct costs of handling and loading materials and supplies at company stores or materials yards and of unloading and handling recovered materials accepted by the Facility Owner at its stores or material yards are reimbursable. In lieu of actual costs, average rates which are representative of actual costs may be used if approved by E-470. These average rates shall be adjusted at least once annually to take into account known or anticipated changes and to correct for any over or under applied costs for the preceding period. At the option of the Facility Owner, five (5) percent of the amounts billed for the materials will be reimbursed in lieu of actual or average costs for handling.

6. Equipment Costs

The average or actual costs of operation, minor maintenance and depreciation of vehicles or equipment owned by the Facility Owner may be reimbursed. When equipment owned by the Facility Owner is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs or (3) as an exception by negotiation when (1) and (2) are impractical due to project location or schedule.

7. Transportation Costs

- i. The Facility Owner's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.
- ii. Reasonable cost of the movement of materials, supplies and equipment to the project and necessary return to the storage including the associated costs of loading and unloading equipment is reimbursable.

8. Credits

- i. Credit to the E-470 Highway project will be required for the cost of any Betterments to the Facility Improvement being replaced or adjusted and for the Salvage Value of the materials removed.
- ii. Credit to the E-470 Highway project will be required for the accrued depreciation of a Facility Improvement being replaced. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the Facility Owner's service, distribution or transmission lines.

- iii. No Betterment credit is required for additions or improvements which are:
 - (a) Required for E-470 Highway construction, expansion, modification, operation or maintenance;
 - (b) Replacement devices or materials that are of equivalent standards although not identical;
 - (c) Replacement of devices or materials no longer regularly manufactured with next highest grade or size;
 - (d) Required by law under governmental and appropriate regulatory commission code; or
 - (e) Required by current design practices regularly followed by the Facility Owner in its own work, and there is a direct benefit to E-470.
- iv. When the Facility Improvements, including equipment and operating Facility Improvements, described in Section 3.02(g)(8) are not being replaced, but are being rehabilitated and/or moved, as necessitated by E-470 Highway construction, expansion, modification, operation or maintenance, no credit for accrued depreciation is needed.
- v. In no event will the total of all credits required under the provisions of this Section exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by E-470 Highway construction.

9. Billings

- i. The Facility Owner may be reimbursed through E-470 by progress billings for costs incurred at not less than monthly intervals, unless an alternative agreement is made. Cost for materials stockpiled at the project site or specifically purchased and delivered to the Facility Owner for use on the project may also be reimbursed on progress billings.
- ii. The Facility Owner shall provide one final and complete billing of all costs incurred, or of the agreed to lump sum, at the earliest practicable date to the E-470 Finance Director.
- iii. All of Facility Owner's cost records and accounts relating to the project are subject to audit by E-470 for a period of three (3) years from the date final payment has been received by the Facility Owner.
- iv. Reimbursement through a Contractor will be in compliance with the agreement between the Contractor and E-470 and any fully executed standard utility relocation agreement.

4.00 FACILITY IMPROVEMENT INSTALLATION PRIOR TO E-470 PROJECT

When the advance installation of new Facility Improvements crossing or otherwise occupying the property proposed to be acquired by E-470 is underway, or scheduled to be underway, prior to the time such property is purchased by or under control of E-470, arrangements shall be made for such Facility Improvements to be installed in a manner that will meet the requirements of E-470. A standard utility relocation agreement (see Appendix D) may be entered into to cover the additional costs incurred by the Facility Owner that are attributable to, and in accommodation of, an E-470-related project.

5.00 ENGINEERING

5.01 Physical Location

a. Aerial Utility Improvements – Parallel

1. Aerial Utility Improvements when permitted within E-470 Property shall be located as close as practicable to the exterior MUE line so as not to interfere with normal E-470 Highway maintenance and to minimize conflicts and avoid the need for future adjustment. Location shall be such that the Utility Improvements will present the minimum danger to the E-470 Highway users. Down guys and anchors shall not obtrude upon the cut or fill slopes. Minor variations will be considered on an individual basis, on substantiation submitted by the Utility.
2. Aerial Utility Improvements shall not be located within the established Clear Zone for the E-470 Highway.
3. Where the safety of the motorist is provided for by guardrail or other protective devices or structures, the aerial Utility Improvement may be located behind such guardrail, or other device, in accordance with current practice.
4. No Longitudinal Utility Installations shall be allowed in the E-470 Highway median, except for utilities that serve E-470 and or the E-470 Highway.
5. Aerial Utility Improvements will be located within E-470 Property as far as practicable from the edge of the travel lane.
6. The minimum vertical clearance to overhead installations shall be as required by the current National Electrical Safety Code ("NESC"), U.S. Department of Commerce, National Bureau of Standards. However, E-470 in certain instances may request additional clearance. If any conflict arises between the clearance required by E-470 and the NESC, the NESC shall control.
7. Aerial Utility lines to be installed longitudinally on E-470 Property will normally be limited to single pole construction. Joint use single pole construction is encouraged, in accordance with Rule 222 of Part 2 of the current NESC, at locations where more than one Utility is involved. Except in very unusual

circumstances for short distances, duplication of aerial pole line construction on the same side of the E-470 Highway will not be permitted.

8. The location of poles, guys and related ground mounted Utility Improvements are to conform to the "AASHTO Policy on the Accommodation of Utilities on Freeway ROW."

b. Aerial Utility Improvements – Crossings

Aerial Utility Improvements shall cross the E-470 Highway at an angle near ninety (90) degrees wherever practical. Poles, anchors and other appurtenances shall be located near or outside the Fee. Any such Utility Improvement shall not be located in a median less than eighty (80) feet in width. Poles and other appurtenances may be located in the median if other alternatives are determined to be impractical, and where suitable protection is provided to the E-470 Highway user. No crossing components shall obtrude upon the back slope, fore slope or roadway.

Minimum overhead clearances at highest roadway surface elevation at the point of crossing shall be as follows for open supply line wires, arc wires and service drops:

0 – 750 Volts.....	18 feet minimum overhead clearance
750 – 22,000 Volts.....	20 feet minimum overhead clearance
22,000 – 50,000 Volts.....	22 feet minimum overhead clearance

Voltage exceeding 50,000 volts: If the voltages of the conductors exceed 50,000 volts, the clearance shall be increased at the rate of one-half (½) inch for each 1,000 volts in excess of 50,000 volts.

For communications lines, including fiber optic communication lines, the minimum overhead clearance shall be eighteen (18) feet.

Minor variances will be considered on an individual basis, on substantiation submitted by the Utility.

c. Buried Utility Improvements – Parallel

1. The proposed installation of buried Utility Improvements parallel to the E-470 Highway shall be located within the Utility Zone and as far as practical from the edge of the Fee. Surface components of buried Utility Improvements, i.e., valves, manholes, vents, etc., shall be located as close as possible to the edge of the Fee or in the MUE where the MUE is available. The high point of structural elements such as manholes, vaults and anchor blocks shall be at or below the grade of the Fee surface. Minor variations will be considered on an individual basis, on substantiation submitted by the Utility.
2. Natural Gas: Natural gas pipelines shall be installed at a minimum depth of twenty-four (24) inches or more from the lowest point of the Fee surface to the top of the Utility Improvement as recommended by the provisions of the Department of Transportation, C.F.R., Title 49, Part 192, Transportation of Natural Gas by Pipeline: Minimum Federal Safety Standards. However, E-470

in certain instances may request greater depths. If any conflict arises between the depth required by E-470 and C.F.R., Title 49, Part 192, C.F.R., then Title 49, Part 192 shall control.

3. Liquid Hydrocarbon: Liquid Hydrocarbon pipelines shall be installed at a minimum depth of four (4) feet or more from the lowest point of the Fee surface to the top of the Utility Improvement, as recommended by the provisions of the Department of Transportation for Hazardous Liquids by Pipeline. However, E-470 in certain instances may request greater depths. If any conflict arises between the depth required by E-470 and the provisions of the Department of Transportation for Hazardous Liquids by Pipeline, then the provisions of the Department of Transportation for Hazardous Liquids by Pipeline shall control.
4. Water and Sewer Utility Improvements: Water and Sewer pipeline installation shall conform to the Standards for Railway and Highways Crossings adopted by the American Water Works Association and such state statutes and industry standards as are applicable. However, E-470 in certain instances may request greater depths. If any conflict arises between the depth required by E-470 and the Standards for Railway and Highways Crossings, then the Standards for Railway and Highways Crossings shall control.
5. Electrical Power Lines: Underground electrical power improvements shall be buried not less than the minimum depths required by the National Electrical Safety Code. However, E-470 in certain instances may request greater depths. If any conflict arises between the depth required by E-470 and the NESC, then the NESC shall control. Pedestals or other above ground appurtenances installed as part of a buried cable plant shall be located in the MUE at or near the Fee Line, well outside the E-470 Highway maintenance and operating area. The Utility shall place readily identifiable and suitable markers for underground cables as deemed necessary by applicable codes or as contained in the permit or agreement.

For uncased power cable, the minimum depth of installation from E-470 Property's surface shall be:

0 – 600 volts	24 inches
601 – 50,000 volts	30 inches
over 50,000 volts.....	42 inches

6. For Fiber Optic Communication Lines, the minimum depth of installation shall be four (4) feet from the lowest point of E-470 Property's surface to the top of the Utility Improvement.

d. Buried Utility Improvements – Crossings

Buried Utility Improvements shall cross the E-470 Highway at an angle near ninety (90) degrees, wherever practical. All surface components of a buried Utility Improvement crossing shall be in the Utility Zone and located as far as practical from

the edge of the Fee. All buried Utility Improvement crossings will be installed at a depth of twenty-four (24) inches or more from the lowest point of the Fee surface to the top of the improvement. Minor variations will be considered on an individual basis, on substantiation submitted by the Utility.

Installation of buried Utility Improvements crossing the E-470 Highway shall be performed by boring or jacking under the roadway. Open cut installations within the Clear Zone will not be allowed.

All proposed buried carrier pipes crossing the E-470 Highway shall be constructed of steel, cast iron or reinforced concrete pipe; or shall be encased; or shall be of such materials and design as may be approved by E-470. Each question of carrier material and/or encasement requirements shall be considered on an individual basis, based on design data submitted by the Utility. At all controlled access locations, the encasement shall extend completely across the access control locations and shall extend at least from the toe of slope to the toe of the opposite slope, or as otherwise directed by E-470.

5.02 Design

a. Industry Standards

Except where a higher degree of protection is required by industry or governmental codes, or by laws or orders of the public authority having jurisdiction over the Utility, all Utility Improvements in, on, along, over, across, through or under E-470 Property, as a minimum, shall meet the following requirements:

1. Electric power or communication Utility Improvements shall conform to the National Electrical Safety Code.
2. Water, sewage and other effluent lines shall conform to the currently applicable specifications of the American Water Works Association and such state statutes and industry codes as are applicable.
3. Pressure pipelines shall conform with the applicable sections of the Standard Code of Pressure Piping of the American National Standard Institution; Title 49, C.F.R., Parts 912, 193 and 195; and applicable industry codes.
4. Liquid petroleum pipelines shall conform to the currently applicable recommended practice of the American Petroleum Institute for pipelines crossing under railroads and highways.
5. Any pipeline carrying hazardous materials shall conform to the rules and regulations of the U.S. Department of Transportation governing the transportation of such materials.

b. General Considerations

1. All Utility Improvements in, on, over, along, across, through or under E-470 Property and attachments to the Highway Structures shall be of durable materials, designed for long service life expectancy and relatively free from routine servicing and maintenance.
2. For new Utility Improvement installations, or adjustment of existing Utility Improvements, provisions shall be made for any anticipated future expansion of the Utility Improvements, particularly those underground or attached to Highway Structures. These provisions shall be so planned as to avoid interference with E-470 Highway traffic when the Utility Improvements are expanded in the future.
3. The Utility shall be responsible for the design, construction and maintenance of all Utility Improvements to be installed in, on, over, along, across, through or under E-470 Property. All elements of these Utility Improvements are subject to review and approval by E-470, particularly the materials, location and method of installation. The Utility is responsible for, and will provide all measures required to preserve the safe and free flow of traffic, structural integrity of the roadway or Highway Structure, ease of E-470 Highway maintenance and appearance of the E-470 Highway, resulting from its Utility Improvement.
4. Conditions which are generally unsuitable or undesirable for underground crossing shall be avoided. These include locations such as in deep cuts; near footings or bridges and retaining walls; across intersections at grade or ramp terminals; at cross drains where flow of water, drift or stream bed load may be obstructed; within basins of an underpass drained by a pump; and in wet or rocky terrain where it will be difficult to attain minimum bury.

c. Aerial and Ground Mounted Utilities

1. Ground mounted Utility Improvements shall be designed to be compatible with the scenic quality of the specific E-470 Highway section being traversed.
2. Aerial installations shall be self-supporting single pole construction, preferably with vertical configuration of conductors and cables. Multiple, parallel installations are not permitted. Joint use will be allowed.
3. If new above ground Utility Improvements are permitted within the established Clear Recovery Area, then appropriate counter measures to reduce hazards must be employed.

d. Natural Gas, Water, Sewer and Hydrocarbon Pipeline Utilities

1. Except as required by Section 5.02(d)(2) below, natural gas and other hydrocarbon underground pipe or casing shall be installed at a minimum depth

of twenty-four (24) inches or more from the lowest point of E-470 Property's surface to the top of the Utility Improvement, as recommended by the Federal Minimum Safety Standards, C.F.R., Part 192 of Title 49.

2. Liquid hydrocarbon pipelines shall be installed at a minimum depth of four (4) feet or more from the lowest point of E-470 Property's surface to the top of the Utility Improvement, as recommended by C. F. R., Part 195 of Title 49.
3. Water and sewer pipeline installation shall conform to the currently applicable specifications of the American Water Works Association, and such state statutes and industry codes as are applicable.
4. Joints in pipelines operating under pressure shall be of mechanical or welded, leak proof type of construction. Mortar, grout or other Portland Cement materials will not be allowed as joint sealants.
5. Pipelines located in casings, galleries, utility tunnels or Highway Structures shall be designed to withstand expected internal pressures and to resist internal and external corrosion. Casings or uncased pipelines shall be designed to withstand external pressures as well.

e. Underground Electrical Power and Communications Lines

1. The general controls outlined in Section 5.02(f) for pipelines, as related to burying encasement, location, markers, installation and adjustment, are also required for underground installations of electrical power and communication lines.
2. Underground electrical power and communication improvements shall be buried not less than the minimum depths required by the National Electrical Safety Code.
3. Crossings required for service connections or crossings which, in the opinion of the Utility, will not require reinforcement, may be made without the use of conduit if approved by E-470.
4. All other crossings shall be made with conduit of sufficient capacity to handle anticipated future requirements of the Utility.
5. Conduit shall be of sufficient strength to carry prescribed legal weights of construction equipment and E-470 Highway traffic. Where required, concrete or other material shall be placed over the conduit for extra strength.

f. Encasement Required

It is E-470's policy that all Utility Improvements be encased to avoid endangering the safety of the traveling public or interference with the free flow of traffic on the E-470 Highway. Encasement is required when the depth of fill over the top of the pipe to the lowest point of the roadway is less than four (4) feet and six (6) inches, or under any

of the following conditions:

1. The Utility's policy of encasement may require either all pipe or pipe of certain size to be encased. If vents are installed, they must be in a location not to interfere with E-470's maintenance operations.
2. If ground in which pipes are to be bedded is of questionable stability, a concrete cradle may be an alternative choice.
3. For pipelines carrying highly volatile fluids or high pressure gases, either in or suspended from a structure:
 - i. A vent must be provided from the encasing pipe beyond the structure abutments, and
 - ii. The cell in a box girder does not qualify as an encasement.
4. If pipelines transporting liquids are installed adjacent to structures and the structures are subject to settlement, consideration will be given on individual merits, on substantiation submitted by the Utility, to variations or omission of encasement where such requirement is impractical or unreasonable.

g. Encasement Not Required

Except where E-470 determines that the risks to E-470 Property or that of others or the safety of the users of the E-470 Highway requires encasement, encasement is not required when the depth of fill over the top of the pipe to the lowest point of the roadway is greater than four (4) feet and six (6) inches, unless encasement is otherwise required pursuant to Section 5.02(f) of this Manual, and where one or more of the following conditions exist:

1. Steel gas lines are wrapped and coated.
2. Enlarged welded steel pipe sections were installed under the roadbed for utilization at a later date as a casing.
3. Extra strength steel pipe is installed under the roadbed.
4. Corrosion survey data indicates the use of cathodic protection. Such protection shall be designed and maintained in a condition compatible with the specific environment. On a steel pipe, the application of a protective coating does not eliminate or alter any requirements for cathodic protection.
5. A reinforced concrete cap of approved design is used for vitrified clay pipe or standard cast iron pipe.

h. Attachment to Highway Structures

Attachment of utility lines or other Facility Improvements to Highway Structures can materially affect the structural capacity of the E-470 Highway, the safe operation of

traffic, the efficiency of maintenance of the E-470 Highway and aesthetic considerations. Attachments to Highway Structures shall not be allowed.

It is E-470's policy that all Utility Improvements be installed underground whenever possible as an alternative to attaching pipelines to Highway Structures, particularly where hazardous materials are involved, for the safety of the traveling public. If installation underground has an element of hazard, then the relative hazards shall be evaluated. Attachments to a Highway Structure shall never be allowed, however, should E-470 determine to make an exception, and if connection to a Highway Structure is determined by E-470 to be the proper choice, then the same general standards for encasement of pipelines and cables under the roadway, as laid out in this Manual, shall be applied to pipelines and cables attached to Highway Structures. Minor variations from this policy will be considered on an individual basis, on substantiation submitted by the Utility.

i. Appurtenances

If vents, drains, markers, manholes or shutoffs are appurtenant to Utility Improvements, recommended controls for such appurtenances are as follows:

1. Vents shall be located at the high end of casing less than one hundred-fifty (150) feet in length and at both ends of casings longer than one hundred-fifty (150) feet. Vent standpipes shall be located and constructed so as not to interfere with maintenance of the E-470 Highway nor to be concealed by vegetation; preferably, they shall stand on a fence or the Fee Line.
2. Drains shall be provided for casings, tunnels or galleries enclosing carriers of liquid, liquefied gas or heavy gas. Drains may outfall into roadside ditches or natural watercourses at locations approved by E-470. Such outfall shall not be used as a wasteway for purging the carrier unless specifically authorized. See Section 5.02(f) regarding prohibited discharges.
3. The Utility shall place readily identifiable and suitable markers at the Fee Line where it is crossed by pipelines carrying transmittants which are flammable, corrosive, expansive, energized or unstable, particularly if carried at high pressure or potential, except where a vent will serve as a marker. Markers are also desirable for other pipelines.
4. Manholes shall not be located in the pavement, shoulders or median.
5. Shutoff valves, preferably automatic, shall be installed in lines near ends of structures and near unusual hazards, unless hazardous segments can be isolated by other sectionalizing devices in a reasonable distance.

6.00 CONSTRUCTION

6.01 Coordination with E-470

Any Facility construction in, on, over, along, across, through or under E-470 Property,

whether authorized by agreement or permit, requires concurrence by or approval of E-470.

The Facility Owner shall be responsible for coordinating all Facility construction activities with E-470. Work schedules, construction methods and safety/traffic control measures may affect the safety and convenience of the E-470 Highway user or the integrity of the E-470 Highway and are subject to prior written approval by E-470.

Facility construction shall proceed in accordance with the provisions of the agreement or permit authorizing the work, subject to additional instructions or conditions as may be imposed by E-470.

6.02 Coordination and Noninterference with Contractor

When Facility construction, maintenance or relocation occurs within a zone of construction by a Contractor, the Facility Owner shall coordinate the construction with the Contractor instead of E-470, if directed to do so by E-470.

Facility operations in, on, over, along, across, through or under E-470 Property whether authorized by agreement or permit, require concurrence by, or approval of a Contractor when applicable. The Facility Owner shall be responsible for coordinating all Facility construction activities with a Contractor. Work schedules, construction methods and safety/traffic control measures may affect the safety and convenience of the E-470 Highway user, or the integrity of the E-470 Highway, and are subject to prior written approval by the Contractor.

Facility operations shall proceed in accordance with the provisions of any agreement or permit authorizing the work, subject to additional instructions or conditions as may be imposed by E-470, and in a fashion that results in the least amount of interference with any Contractor.

6.03 Traffic Control Plan

Whenever a Facility Improvement construction, installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the Facility Owner shall develop and implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around and through the work site and the safety of the Facility Owner's work force.

The traffic control plan and the application of traffic control devices will be in conformance with the Manual of Uniform Traffic Control Devices (MUTCD), including current revisions and the Colorado Supplement thereto, and any work on public roadways (other than the E-470 Highway) shall be in accordance with state and local traffic control requirements.

The Facility Owner's traffic control plan must be approved by E-470 prior to commencement of work authorized under a permit or agreement. When the Facility Owner's work involves coordination with a Contractor, the Traffic Control Plan must be reviewed and approved by the Contractor. During the course of the work, the plan will be subject to continued review by E-470 and/or a Contractor, and revisions may be required by changed or unforeseen conditions.

All Facility construction, installation, adjustment or maintenance operations shall be planned to keep traffic interference to an absolute minimum. Facility operations interfering with traffic shall not be allowed during periods of peak traffic flow.

No work shall be permitted that infringes on the mainline lanes and no traffic control devices shall be placed within two (2) feet from the outermost solid white line during the hours of 6:00A.M. – 9:00A.M. and 3:00P.M. – 6:00P.M., except as determined by E-470 in its sole discretion and if the Facility Owner assures an acceptable flow of traffic as well as providing the required safety precautions and proper traffic control.

6.04 Erosion Control Plan

Whenever a Facility Improvement construction, installation, adjustment or maintenance activity will result in grading and trenching, the Facility Owner shall develop and implement an erosion control plan using temporary Best Management Practices (BMPs).

The erosion control plan must be approved by E-470 prior to commencement of the work. The designer of the plan shall have been certified in the development of erosion control. The certification shall be by the Rocky Mountain Education Center at the Red Rocks Community College or an equivalent approved by E-470. The plan shall be prepared and presented to E-470 for approval. To prevent delays in the beginning of the work, the erosion control plan should be presented to E-470 prior to the pre-construction conference.

The Facility Owner shall comply with the following best management practices at all times, unless otherwise approved by E-470:

- a. Check Dams;
- b. Erosion Bales;
- c. Drop Inlet Erosion Bales;
- d. Culvert Inlet Protection;
- e. Soil Retention Blanket;
- f. Silt Fence;
- g. Channel Erosion Logs or Bales; and
- h. All Other Best Management Practices implemented by E-470.

No work will be performed until E-470 has approved the installation of the temporary BMPs in the field.

The Facility Owner shall check the temporary BMPs after each storm and clean or replace the BMPs to provide adequate protection against erosion. The Facility Owner shall inspect the temporary BMPs every fourteen (14) calendar days if storm events have not occurred.

After the completion of the work, the temporary BMPs shall remain until the vegetation has been established or until E-470 provides the approval to have the BMPs removed. E-470 shall have the final approval of the removal of the temporary BMPs.

If the Facility Owner fails to install or maintain the temporary BMPs in accordance with this Permit or Common Use Agreement, and the Facility Owner fails to cure within three (3) days

of E-470 having issued written notice, E-470 may shut down the project and revoke all permits issued for the related work.

If E-470 is fined by the Colorado Department of Public Health and Environment or the Environmental Protection Agency because of the actions of the Facility Owner and/or its contractor(s), the Facility Owner will be responsible for indemnifying E-470 for any amounts paid by E-470 as a result, including the amount of any fines, consultant fees and attorneys' fees. If E-470 incurs any additional damages as a result, in whole or in part, of the Facility Owner's and/or its contractors' failure to comply with BMPs, E-470 shall be entitled to recover the amount of damages from the Facility Owner and/or the Facility Owner's contractor.

6.05 Prohibited Discharges into Storm Sewer System

In no event shall the Utility discharge, spill, dump or dispose of any material, other than Stormwater, into a storm sewer system or discharge any substance in violation of any state or federal law or regulation, E-470 Resolution 04-04 (Appendix A-5) or E-470's Illicit Discharge Detection and Elimination Plan.

Notwithstanding any provision to the contrary, unless E-470 or the Water Quality Control Division of the Colorado Department of Public Health and Environment identify them as significant sources of pollutants to the waters of the state, discharging, spilling, dumping or disposing of the following is not prohibited:

landscape irrigation flows, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, drainage collected by foundation drains, air conditioning condensation, irrigation water, spring water, discharge from crawl space pumps, drainage collected by footing drains, flows from lawn watering, flows from individual residential car washing, individual residential swimming pool and hot tub discharges, discharge from individual residential street washing, flows from water-line flushing, flows from riparian habitats and wetlands and flows from emergency fire fighting activities, and street wash water associated with construction activities pursuant to a current, valid E-470 Construction Permit that authorizes such discharges, provided that the permittee develops and implements appropriate control measures, approved by E-470, to minimize the impacts from this source.

E-470 will enlist the assistance of the Colorado State Patrol in enforcing the State Littering Statute against any Person who deposits, throws or leaves any material, other than Stormwater, into a storm sewer system within the boundaries of E-470 in violation of the policy contained in Resolution 04-04 (Appendix A-5). As a secondary enforcement measure, E-470 shall work with local law enforcement agents to ensure enforcement of the prohibition on discharging non-Stormwater within the boundaries of E-470.

If E-470 incurs any damages as a result, in whole or in part, of the Facility Owner's and/or its contractors' having discharged, spilled, dumped or disposed of any material other than Stormwater into a storm sewer, E-470 shall be entitled to recover the amount of damages from the Facility Owner and/or the Facility Owner's contractor.

In addition, the Facility shall conduct any remediation required by the local, state or federal government, other than E-470, at Facility Owner's own cost. If Facility Owner fails to perform the required remediation, such remediation may be performed by E-470. The Facility Owner shall immediately reimburse E-470 for all costs and expenses that it incurs in connection with such remediation. If the Facility Owner fails to reimburse E-470 for the costs and expenses, E-470 may make a claim against the Facility Owner's Payment and Performance Bond, as appropriate.

6.06 General Provisions

a. General Provisions – All Construction

1. The Facility Owner shall notify E-470 in writing seventy-two (72) hours prior to commencing work on E-470 Property when the work directly or indirectly affects traffic operations. When the work does not directly or indirectly affect traffic operations, the Facility Owner shall notify E-470 in writing twenty-four (24) hours prior to commencing work on E-470 Property.
2. E-470, and when applicable the Contractor, shall be notified in writing of any changes on the job that are beyond the scope of the original understanding. Remedial actions may be required.
3. The Facility Owner's proposed schedule of operations is subject to approval of E-470 and/or the Contractor.
4. The Facility Owner shall establish approved safety measures sufficient to protect the traveling public from any and all harm during Facility construction, improvement or relocation.
5. E-470 and/or Contractor shall approve the methods used for opening, backfilling, compacting and repairing of the E-470 Highway surface, and the measures taken to minimize disturbance to, or to restore other physical features within, E-470 Property.
6. During and upon completion of the project, the Contractor and E-470 shall inspect and accept the work insofar as it may affect compliance with E-470's requirements. The Facility Owner may be charged for the expense of supervision and flagging.

b. General Facility Construction Requirements

1. Whenever necessary, the Facility Owner shall provide drainage from its Facility Improvements to avoid any damage to the E-470 Highway. Construction or compaction by means of jetting, puddling or water flooding is prohibited within E-470 Property.
2. Untrenched construction will be required for all buried crossings unless coordinated with E-470 or the Contractor during construction.

3. Crossings will require jacking or boring for a casing, a minimum of five (5) feet from the Fee or MUE to the Fee or MUE or from toe of slope to toe of slope, whichever is greater. Open trench installations shall not generally be permitted unless it is not feasible to bore, push or jack across the roadway. In an open cut situation, which will require prior written E-470 approval, encasement requirements shall be as provided in Sections 5.02(f) and 5.02(g).
4. Portal limits of untrenched crossings will be established safely beyond the E-470 Highway surface to protect traffic and avoid impairing the roadway structure surface during installation of the Facility Improvement. The lateral dimension, between the surfaced area of the E-470 Highway and the portal limits, shall not be less than six (6) feet, if bulk headed, and not less than the vertical difference in elevation between the surfaced area of the E-470 Highway and the line, if not bulk headed, but never less than six (6) feet.
5. The size of boring excavations is restricted to the minimum size necessary for the installation. The boring hole shall not exceed the pipe installation diameter by more than five (5) percent. The oversize excavation shall be backfilled to the satisfaction of E-470. Grout or other approved backfill material will be used for all pipes more than twelve (12) inches in diameter, for overbreaks, unused holes or abandoned pipes. The composition of the grout shall be a cement mortar, a slurry of fine sand or fine granular materials, as local conditions govern, subject to the approval of E-470.
6. All Facility construction operations involving roadside excavations and parallel trenches shall include provisions for safeguarding the traveling public.

c. Coordination with E-470 Construction

Facility construction work accomplished by the Facility Owner shall be coordinated with any physical E-470 Highway construction work in order to prevent unnecessary delay or cost to E-470. To accomplish this objective, appropriate arrangements shall be made to see that to the maximum extent practical and economical, the Facility work is completed before the physical E-470 Highway construction work is started and any such Facility work to be performed concurrently with E-470 Highway construction is properly coordinated.

d. Preconstruction Conference

Prior to the commencement of work by any Facility Owner, a preconstruction conference will be held with all concerned parties to discuss all essential matters pertaining to the project. All Facility Owners which have Facility Improvements within the construction area shall be represented at the preconstruction conference and, therefore, shall be made cognizant of the Contractor's methods of operation and afforded an opportunity to discuss in detail the coordinated and/or concurrent relocation work.

e. Construction Monitoring

E-470, upon notification from the Facility Owner of the date the installation or relocation work is to commence, shall provide the Facility Owner with any pertinent information necessary for the Facility Owner to complete its work.

E-470 project personnel may monitor relocation work with reasonable frequency, depending on the scope of work being accomplished. Final Facility Improvement locations are to be field verified and are to be shown on "As Built" plans.

f. Changes or Modifications in Facility Improvement's Plans or Relocation

1. The Facility Owner may make minor modifications of the relocation plan as dictated by field conditions with the consent of E-470's or the Contractor's resident engineer. All such minor changes shall be fully explained in the final billing.
2. Major changes in the method of relocation require a Contractor's and/or E-470's approval prior to the Facility Owner's effecting such change or modification. A major modification can be defined as changing a Facility Improvement from aerial to underground, relocating an E-470 Highway crossing, shifting from one side of the E-470 Highway to the other, increasing plant capacity by any amount, or a similar change. The change from Facility Owner's personnel performing the work to hiring a contractor is considered a major change and requires prior approval.
3. Upon written notification from the Facility Owner, complete with marked prints and estimates, that a modification or change in the method of relocation is required, the original Facility plan shall be modified by a contract modification order initiated by E-470.

g. Restoration of the E-470 Highway and E-470 Property

1. All areas within E-470 Property disturbed in any manner by Facility operations or construction shall be restored by the Facility Owner to the satisfaction of E-470. Methods and materials for backfilling, compaction, pavement replacement, Highway Structure repairs and landscape restoration are the responsibility of the Facility Owner, subject to the Contractor's and/or E-470's approval.
2. All debris, refuse, waste, salvage and surplus materials shall be removed from E-470 Property during or upon completion of Facility construction activities.
3. The Facility Owner shall avoid disturbing or damaging existing E-470 Highway drainage improvements and is responsible for repair or restoration of any such damage including restoration of ditch flow lines.
4. Backfill shall be placed in lifts of no greater than six (6) inch layers of granular materials each consolidated by mechanical tamping and controlled addition of

moisture. Consolidation by supersaturation, ponding or flooding will not be permitted in any case. All excavations outside the roadway slopes shall be satisfactorily backfilled and compacted to a density equal to the surrounding undisturbed soil. All excavations within the toes of the slopes shall be satisfactorily backfilled and compacted to ninety-five (95) percent of maximum dry density, as determined by a standard compaction test, AASHTO Method T-99 or equivalent. Materials and methods of compaction shall be adapted to achieve rapid restoration of traffic service.

5. Any portion of the pavement structure which is broken, disturbed, cut or otherwise damaged in any way, shall be removed and replaced to a design equal to or greater than the surrounding undisturbed pavement structure. Pavement repair specifications shall be approved by E-470 prior to performance of work.
6. Pavement replacement may be performed by either the Facility Owner or by E-470 at the expense of the Facility Owner. If replaced by the Facility Owner, maintenance responsibility shall be an obligation of the Facility Owner for twelve (12) months after completion and final acceptance. The Facility Owner shall be liable for cost of the repairs if the backfill subsides or the patched pavement fails during the maintenance period. Where the Facility Owner either is not equipped or fails to properly repair the damage to the pavement structure or to maintain the repairs, E-470 shall repair the damage and bill the Facility Owner for the actual cost incurred.
7. Any monument marking the boundaries of E-470 Property, the Fee or the MUE that is destroyed, disturbed, moved or otherwise damaged in any way shall be restored or replaced with a new E-470 monument by the E-470 Surveyor, at the Facility Owner's sole expense. The Facility Owner shall restore E-470 Property if it is damaged or disturbed during the monument restoration process. Such restoration shall include restoring vegetation and providing irrigation as needed. If Facility Owner fails to reimburse E-470 for the costs and expenses, E-470 may make a claim against the Facility Owner's Payment and Performance Bond, as appropriate.
8. Right-of-way fence damaged or removed due to construction is to be re-established to its original position one (1) foot inside the right-of-way boundary upon restoration of any destroyed, disturbed, or moved survey markers or monument(s).
9. Restoration of E-470 Property disturbed by a Facility Owner shall include reseedling or resodding to restore pre-construction conditions. This work shall consist of seeding or sodding all areas which are denuded of vegetation during Facility construction operations. The work will be accomplished under the direction of E-470. The seed species, origin and application rates will be as determined by E-470.
10. All Unsatisfactory Work shall be promptly replaced by the Facility Owner. If not promptly and properly performed by the Facility Owner, restoration work

will be performed by E-470, and E-470 shall be entitled to recover the amount of cost and expenses it incurs from the Facility Owner or the Facility Owner's contractor.

11. All Facility Improvement installations will be field verified by a Colorado registered land surveyor and a set of As-Built plans that comply with Part 8.00 of this Manual will be provided which clearly represent the actual field location. This will include station and offset locations. The Payment and Performance Bond will not be released until six (6) months after the expiration of the two (2) year warranty period, and any extensions thereof, which commences after Final Acceptance.

h. Warranty

Facility Owner shall warrant that the work constructed is free from defects in workmanship and materials for a period of two (2) years from the Final Acceptance date.

If any element of the work constructed or any restoration work fails within two (2) years due to improper construction or materials the Facility Owner shall make all repairs as soon as practical but not less than thirty (30) calendar days once notified in writing by E-470. E-470 may require Facility Owner to apply for and obtain an E-470 Construction Permit in order to perform such repairs. If the Facility Owner fails to perform warranty work within thirty (30) calendar days or other period as agreed upon by Facility Owner and E-470, E-470 may perform the warranty work. E-470 shall be entitled to recover the costs and expenses it incurs from the Facility Owner. The Facility Owner shall immediately reimburse E-470 of all costs and expenses it incurs in connection with such work.

7.00 OPERATION AND MAINTENANCE

7.01 General Requirements

- a. Subsequent to the initial installation, all repair, maintenance, reconstruction, relocation or removal of Facility Improvements shall be accomplished in such manner as will cause the least interference with normal operation and maintenance of the E-470 Highway. An Access or Construction Permit must be obtained from E-470. (See Part 2.00). If a Facility Owner fails to obtain a required permit, E-470 may deem any individual a trespasser who enters E-470 Property without such permit and the Facility Owner may be fined or prohibited from entering E-470 Property. (See Section 2.02).
- b. The Facility Owner shall maintain, at its sole expense, the installations and structures occupying E-470 Property. All Facility Improvements located on E-470 Property shall be kept in an adequate state of repair both structurally and in appearance.
- c. Routine, periodic maintenance of existing Facility Improvements may be performed without notification only if the anticipated maintenance requirements are authorized in the original document authorizing occupancy and use or, alternatively, a separate

permit has been issued setting forth approved conditions for repeated servicing of the Facility Improvements.

- d. Any extensive physical revisions, relocations, additions, excavations, impedance of traffic or other disturbance of E-470 Property will require the submittal of a new or revised permit application requesting prior approval by E-470.
- e. Where Facility supports, manholes or other appurtenances are located in medians or interchange areas, access to them from through-traffic roadways or ramps may be permitted only by Permits (see Appendix C) issued by E-470 to the Facility Owner, setting forth the conditions for policing and other controls to protect E-470 Highway users.
- f. The Facility Owner is prohibited from spraying, cutting or trimming of trees, or other landscaping elements, unless specific written permission is given by E-470. The approval of a Facility permit does not include approval of such work, unless the spraying, cutting or trimming is clearly indicated on the permit application. In general, where permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed and the hole properly backfilled.
- g. The Facility Owner is prohibited from discharging, spilling, dumping or disposing of any material, other than Stormwater, into a storm sewer system. (See Section 6.05).
- h. Repairs of an emergency nature, necessary for the safety of the traveling public, may be immediately performed without prior approval, provided that the Facility Owner shall notify E-470's command center immediately by telephone and that it shall provide a written report of the emergency within seventy-two (72) hours thereafter to E-470. When such emergency repairs could conceivably constitute a traffic hazard, E-470 and the State Patrol shall be immediately verbally notified to coordinate safety measures. Advance arrangements shall be made between the Facility Owner and E-470 for emergency maintenance procedures.
- i. When required pursuant to Section 6.03 of this Manual, Facility Owner shall develop and implement a traffic control plan. When required pursuant to Section 6.04 of this Manual, the Facility Owner shall develop and implement an erosion control plan using temporary Best Management Practices (BMPs).

7.02 Termination of Occupancy

Upon termination of occupancy, the Facility Owner shall remove its Facility Improvements and restore E-470 Property as near as practicable. Notice of such termination shall be provided to E-470 within twenty-four (24) hours of such termination. Restoration shall be completed in an expeditious manner but in no case longer than two (2) weeks after termination.

7.03 Clear Roadside Considerations

The provisions of this Manual are intended to promote E-470 Highway user safety by providing a roadside Clear Zone that is free from hazards and fixed objects. Utility

Improvements may be accommodated within the Fee only if such hazards are located outside the designated Clear Zone.

Definition of Clear Zone: The Clear Zone, or Clear Recovery Area, is that portion of the roadside, within the Fee, free of nontransverseable hazards and fixed objects. The Clear Zone is an integral design feature of the E-470 Highway and is related to design speed, horizontal alignment and embankment slope. Utilities are to be located in a manner that preserves the measure of safety afforded by the Clear Zone. The Clear Zone width shall be established to avoid the need for traffic barriers as further defined in the AASHTO "Road Side Design Guide" (with current revisions), as it currently exists and as amended and updated by the AASHTO from time to time.

7.04 New Above Ground Utility Improvements

New above ground Utility Improvements on E-470 Property, where permitted, shall be installed outside the Clear Zone as identified on the roadway plans. Appropriate measures shall be taken to preserve the established Clear Recovery Area and to minimize the hazards to users of the E-470 Highway. Underground and alternate locations shall be required in lieu of placing new above ground Facility Improvements within the Clear Recovery Area. Facility Improvements that could present a hazard to the E-470 Highway user shall be located as far from the traveled way as possible, preferably in the MUE or near the outer edge of the Fee.

7.05 Existing Utility Improvements

Utility Improvements in place or under construction prior to E-470's possession or ownership of E-470 Property shall be deemed to conform with these standards without further documentation except as follows:

- a. Where it is mutually determined that definite hazards are created by the present location of such Utility Improvements, E-470 and the Utility shall mutually attempt to eliminate such hazards. The replacement Utility Improvement shall conform to the standards required for new Utility Improvements on E-470 Property.
- b. Where existing Utility Improvements must be relocated due to E-470 Highway construction, expansion, modification, operation or maintenance, the replacement Utility Improvements shall conform to the standards required for new Utility Improvements on E-470 Property.

8.00 AS-BUILTS

8.01 As-Built Standards

- a. Permittee shall use E-470's As-Built drawings as the base document when preparing as-built for the Facility Improvement as constructed.
- b. All As-BUILTS shall:

1. Be prepared by a licensed surveyor/mapper or professional engineer or prepared by others under a surveyor or engineer's direction with E-470 approval;
 2. Tie to a minimum of two (2) E-470 Highway proximate control monuments;
 3. Use field measurements of vertical or horizontal dimensions of constructed improvements and clearly show as symbols, notations, or delineations, those Facility Improvements;
 4. Have a degree of six (6) inch vertical and horizontal accuracy such that E-470 can determine whether the Facility Improvements were constructed consistent with planned locations;
 5. Conform to E-470 recorded property documents;
 6. Match with E-470's Coordinate System;
 7. Be submitted within thirty (30) calendar days of E-470's acceptance of the Facility Improvement; and
 8. Be delivered to the E-470 Permit Dept. in both Adobe Portable Document Format (PDF) and digital form compatible with Intergraph Microstation V8 or such other compatible format as required by E-470.
 9. Constitute what was built, not what will be built, or the ultimate.
- c. Every as-built submitted will be subject to E-470 inspector's field verification that what was built conforms to as-built drawing(s).

8.02 Auxiliary Documents

E-470 may require Permittee to provide a record of the Facility Improvement(s) including materials used and copies of all testing reports where failure of the Facility Improvement(s) could cause damage to E-470 Property or has the potential to put the traveling public at risk.

Appendix A-1

Resolution 00-05 Regarding the Adoption of the Utility, Telecommunication and Cable Facility Crossing and Relocation Policies of the E-470 Public Highway Authority

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY**

**Regarding the Adoption of the Utility, Telecommunication and Cable Facility
Crossing and Relocation Policies
of the E-470 Public Highway Authority**

WHEREAS, by resolution on March 13, 1989, the Board of Directors of the E-470 Public Highway Authority (the "Authority") adopted the Utility Policies of the E-470 Public Highway Authority dated February 28, 1989 (the "1989 Utilities Policies"); and

WHEREAS, the 1989 Utilities Policies are intended to provide guidance to the Authority's staff and consultants and to provide information to the public; and

WHEREAS, the Authority's staff and legal counsel have reviewed the 1989 Utilities Policies and noted areas therein where clarification would be appropriate and beneficial, including but not limited to removing references to longitudinal utility installations, which longitudinal utility installations shall be addressed in the Right-of-Way Policies and Procedures Manual; and

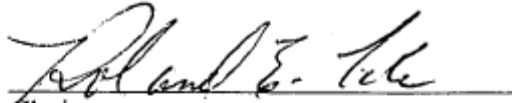
WHEREAS, such clarifications have been memorialized in an amended version of the 1989 Utilities Policies attached hereto and incorporated herein as Exhibit A (the Utility, Telecommunication and Cable Facility Crossing and Relocation Policies of the E-470 Public Highway Authority (the "New Utilities Policies")).

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF
DIRECTORS OF THE E-470 PUBLIC HIGHWAY AUTHORITY AS FOLLOWS:**

1. The New Utilities Policies, attached hereto as Exhibit A, prepared by the Authority's staff and legal counsel, are hereby approved and adopted by the Board of Directors of the Authority.
2. The policies and procedures set forth in the New Utilities Policies are hereby made the policies of the Board of Directors of the Authority and thereby supersede the 1989 Utilities Policies and all other policies and procedures relating to utility, telecommunication and cable facility crossings and relocations that exist currently, and the Authority's staff and legal counsel shall take the necessary actions to conform the E-470 Utilities Procedures Manual dated May 1989, to the extent it is inconsistent with the New Utilities Policies.
3. The Authority's staff and consultants shall adhere to the policies and procedures set forth in the New Utilities Policies.

4. The Authority's staff shall make the New Utilities Policies available to any interested members of the public.

DONE and adopted this 25th day of May, 2000, by the Board of Directors of the E-470 Public Highway Authority.


Chairman

Attest:



EXHIBIT A

Utility, Telecommunication and Cable Facility Crossing and Relocation Policies of the E-470 Public Highway Authority

00-05

**UTILITY, TELECOMMUNICATION AND CABLE FACILITY CROSSING AND
RELOCATION POLICIES
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY**

As per Resolution adopted by the E-470 Public Highway Authority Board of Directors dated 03/10/89 [as amended by the Resolution adopted by the E-470 Public Highway Authority Board of Directors dated 5/25/00]:

1. The E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado (the "Authority"), has the power and responsibility to regulate utility occupancy on its property, including but not limited to its right-of-way, multi-use easements, easements, paved lanes, landscaping, curbs, gutters, culverts, access roads, interchanges, drainage facilities, toll collection facilities, service areas and maintenance facilities ("E-470").

2. It is the policy of the Authority that privately or publicly owned utility facilities, including but not limited to oil and gas, water and sanitation facilities and telecommunication and cable facilities transversing (not longitudinal) the Authority's right-of-way and multi-use easements, to the extent required by applicable state laws and regulations be accommodated within the Authority's right-of-way and the Authority's multi-use easements (collectively the "Authority's Property") in a manner that does not adversely affect highway or traffic safety, or that does not otherwise impair the construction, installation, operation, aesthetic quality, maintenance or repair of E-470 ("Facilities").

3. The Authority's policy is to accommodate Facilities in the Authority's Property in accord with the Facilities' owners' lawful rights of occupancy and in a manner that upholds the Authority's responsibilities for the design, management, construction, operation, maintenance, installation and repair of E-470.

4. It is the Authority's policy that all Facilities be installed in such a manner and location that the installation, construction, maintenance and repair of the Facilities will not endanger the safety of the travelling public or interfere with the free flow of traffic on E-470.

5. It is the Authority's policy that whenever practical all Facilities located within the Authority's Property shall be buried and that the placement of Facilities over the Authority's Property shall be avoided.

6. Facilities shall be installed to the extent possible perpendicular to the paved highway lanes.

7. Except where a higher degree of protection is required by industry or governmental codes or law, all Facilities' installations within the Authority's Property shall meet the requirements of these policies and the procedures, standards and agreements developed to carry out these policies.

8.

a. Where a Facilities' owner has a fee or easement interest that pre-exists the acquisition of the Authority's Property, the legal description of the pre-existing fee or easement interest overlaps with the legal description of the Authority's Property and the Facilities can be serviced, maintained and operated without access from the through traffic roadways or ramps, the Facilities may remain as long as they do not adversely affect the safety, design, construction, operation, maintenance or stability of E-470. A common use agreement shall be entered into between the Authority and the Facilities' owner to set forth the specific conditions of occupancy and obligation of each party.

b. Where a Facilities' owner has a fee or easement interest that pre-exists the acquisition of the Authority's Property, the legal description of the pre-existing fee or easement interest overlaps with the legal description of the Authority's Property and the Authority determines that it is necessary that such Facilities should be relocated, the owner of such Facilities shall relocate its Facilities in accordance with these policies; but the Authority will pay the reasonable costs of relocation of the Facilities and will obtain for or reimburse the Facilities' owner for all reasonable costs to acquire necessary easements on adjoining property to the extent reasonably necessitated by the Authority's order to relocate.

9. Except as expressly stated herein, a Facilities' owner is responsible for costs of relocating its Facilities, including without limitation, the costs to acquire additional easements, for all relocations, including future relocation necessitated by the widening or other improvement of E-470. In no event shall the Authority pay relocation costs of a Facility which prior to the acquisition of the Authority's Property occupies a public right-of-way, including by way of illustration and not limitation, a public road, street, alley or other public way.

10. The Facilities' owner shall be responsible for the design, construction, installation, operation, maintenance and repair of all the facilities to be installed within the Authority's Property. All aspects of the design, construction, installation, operation, maintenance and repair of these facilities are subject to prior review and approval by the Authority, particularly the materials, location and method of installation and the methods of repair and maintenance. The Facilities' owner is responsible for providing all measures required to preserve the safe and free flow of traffic, structural integrity, ease of maintenance and appearance of E-470.

11. It is the policy of the Authority to require evidence of insurance and a bond or other form of security to insure satisfactory completion of work and performance of any warranty work. All Facilities' owners and their agents shall procure at their own expense and maintain for the duration of the time they are working on the Authority's Property the following minimum insurance coverages and naming the Authority as an additional insured or, if self insured, reserves in an amount satisfactory to the Authority:

a. Worker's compensation insurance in accordance with applicable law, including employers liability.

b. Commercial general liability insurance in the amount of at least \$1,000,000 combined single limit bodily injury and property damage, each occurrence; and at least \$2,000,000 general aggregate, and at least \$1,000,000 products and completed operations aggregate. Coverage shall include all major divisions of coverage and be on a comprehensive basis, including:

- 1) premises operations;
- 2) personal injury liability without employment exclusion;
- 3) blanket contractual;
- 4) broad form property damages, including completed operations;
- 5) medical payments;
- 6) products and completed operations;
- 7) independent contractors coverage;
- 8) explosion, collapse and underground;
- 9) contractors limited pollution coverage;
- 10) coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction contractor; and
- 11) care, custody and control coverage.

c. Commercial Automobile liability insurance in the amount of at least \$1,000,000 combined single limit bodily injury and property damage, each accident covering any auto.

d. Excess Liability coverage – Liability coverage inclusive of general liability, professional liability, automobile liability, and employers liability in the amount of at least \$5,000,000 combined single limit bodily injury and property damage, each occurrence; and at least \$5,000,000 in the aggregate.

12. It is the policy of the Authority to obtain indemnification from all Facilities' owners for the injury or death to any person or the loss of or the damage to property of any kind when such injury, death, loss, or damage arises out of or results from the design, construction, installation, operation, maintenance or repair of existing or future Facilities located within the Authority's Property irrespective of whether the Authority shall have expressly or impliedly approved the design, construction, installation, operation, maintenance or repair of such Facilities within the Authority's Property.

13. These policies do not alter any applicable state or federal laws, orders or regulations, or any applicable industry codes that govern the design, installation, operation, maintenance or repair of Facilities. Each Facilities' owner is responsible for assuring compliance with the provisions of these policies and the conditions of any permit issued pursuant to these policies. However, this does not relieve any Facilities' owner of its legal responsibilities under the laws of this state, the federal government or any applicable industry codes.

14. The Executive Director shall have the responsibility and authority to develop, approve and implement procedures, standards and agreements necessary to carry out these policies.

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Appendix A-2

Resolution 02-06 Regarding Accommodation of Utilities in the Right-of-Way

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY**

Regarding Accommodation of Utilities in the Right-of-Way

WHEREAS, pursuant to the powers described in Section 43-4-506(1)(g), C.R.S., the E-470 Public Highway Authority (the "Authority") acquired an interest in real property in fee-simple, generally measuring three hundred feet in width, for the length of the E-470 Public Highway (the "Fee Ground"), additional real property in fee-simple at interchanges, grade separations and elsewhere, and multi-use easements at certain locations in Segment I and generally extending seventy-five feet on either side of the Fee Ground along Segments II through IV (collectively, the "Right-of-Way"); and

WHEREAS, the Authority expended public funds to acquire its property interests in the Right-of-Way; and

WHEREAS, given proper arrangements, including but not limited to compensation for the use of such property interests, the Authority is willing to allow utilities to be placed in the Right-of-Way, either generally perpendicular to the Right-of-Way ("Transverse Crossing") or generally parallel to the mainline of the E-470 Public Highway ("Longitudinal Utility Installation"); and

WHEREAS, the Authority has the power to construct, finance, operate, or maintain public highways pursuant to Section 43-4-506(1)(f), C.R.S. and the definition of public highway includes the beltway and other real and personal property, including easements and rights-of-way, pursuant to Section 43-4-503(12), C.R.S.; and

WHEREAS, the Board of Directors of the Authority is empowered to pass orders and resolutions necessary for the government and management of the affairs of the Authority and the execution of the powers vested in the Authority, pursuant to Section 43-4-505(3)(c), C.R.S.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE E-470 PUBLIC HIGHWAY AUTHORITY:

1. The Board of Directors finds as follows:
 - a. The governmental units which are parties to the Establishing Contract of the E-470 Public Highway Authority, as amended, ("Member Entity" or "Member Entities") have and continue to provide support to the Authority, financially and otherwise, in the construction, financing, operation and maintenance of the E-470 Public Highway.
 - b. Member Entities have and continue to provide accommodation to the Authority in the construction, financing, operation and maintenance of the E-470 Public Highway.

c. Citizens of Member Entities support the Authority through tax dollars collected by the Member Entities and loaned to the Authority and through vehicle registration fees and impact fees assessed by the Authority.

d. Some Member Entities provide water, sewer and storm drainage services to their citizens. Citizens of some Member Entities receive water, sewer and storm drainage services from other governmental entities who have cooperative relationships with Member Entities and provides services predominately to citizens of Member Entities ("Related Entity" or "Related Entities"). The Board of Directors shall determine which such other governmental entities are Related Entities.

e. Developer or governmental entities occasionally construct water, sewer or storm drainage facilities and improvements and dedicate them to Member Entities or Related Entities ("Dedicating Entity" or "Dedicating Entities").

2. The Board of Directors hereby establishes as the policy of the Authority the accommodation of utilities otherwise eligible to be placed in the Right-of-Way pursuant to the E-470 Public Highway Authority Utilities Procedures Manual (the "Manual"), in return for permit and administration fees, as applicable. The Board of Directors retains the authority to revoke or modify this policy at any time and without notice.

a. Member Entities and Related Entities shall be exempt from permit fees for Transverse Crossings, as defined in the Manual. Member Entities and Related Entities shall pay administrative fees for Transverse Crossings, pursuant to the Manual.

b. Upon receipt of documentation, in a form satisfactory to the Authority and establishing that a Dedicating Entity is obligated to dedicate a particular water, sewer or storm drainage facility or improvement (a "Dedicated Utility") to a Member Entity or Related Entity, a Dedicating Entity shall be exempt from the permit fee charged for a Transverse Crossing for that Dedicated Utility. Dedicating Entities shall pay administrative fees for Transverse Crossings, pursuant to the Manual. Following dedication to and final acceptance by the Member Entity or Related Entity of the Dedicated Utility, the Dedicating Entity shall provide documentation, in a form satisfactory to Authority staff, of the completed dedication. A Dedicating Entity which fails to complete dedication of a Dedicated Utility shall lose its exemption from and shall immediately pay the permit fee applicable to that Dedicated Utility.

c. All other entities or individuals shall pay all permit fees and administrative fees for Transverse Crossings, pursuant to the Manual.

d. This exemption shall not apply to Longitudinal Utility Installations. All entities and individuals, including Member Entities, Related Entities and Dedicating Entities, shall pay permit fees and administrative fees for Longitudinal Utility Installations, pursuant to the Manual.

e. In the event the Authority requires relocation of any water, sewer or storm drainage facility or improvement owned and installed in the Right-of-Way by a Member Entity, the Authority and the Member Entity shall equally share the costs of such relocation.

3. Authority staff and general counsel shall review and revise the Manual to incorporate, implement and enforce this policy, any other policies of the Board of Directors relating to the Manual's subject matter which have been adopted prior to the date of this resolution or which are adopted in the future, and any procedures necessary to effect such policies.

DONE and adopted this 12th of Sept., 2002, by the Board of Directors of the E-470 Public Highway Authority.

Noel D Busel
Chairman

Attest:

[Signature]

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Appendix A-3

Resolution 02-07 Regarding the Adoption of the E-470 Multi-Use Easement Landscape and Improvements Policy of the E-470 Public Highway Authority

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY**

**Regarding the Adoption of the E-470 Multi-Use Easement
Landscape and Improvements Policy
Of the E-470 Public Highway Authority**

WHEREAS, the E-470 Public Highway Authority (the "Authority") was created pursuant to the Public Highway Authority Law, § 43-4-501 *et seq.*, C.R.S., to finance, construct, operate and maintain the E-470 public highway; and

WHEREAS, § 43-4-505(3)(c), C.R.S. empowers the Board of Directors (the "Board") to pass resolutions necessary for the management of government affairs and the execution of Authority powers; and

WHEREAS, pursuant to § 43-4-506(1)(c), C.R.S., the Authority has the power to enter into contracts and agreements affecting the affairs of the Authority; and

WHEREAS, pursuant to § 43-4-506(1)(g), C.R.S., to purchase, trade, exchange, acquire, buy, sell, lease, lease with an option to purchase, dispose of, and encumber real or personal property and any interest therein, including easements and rights-of-way; and

WHEREAS, the Authority has acquired or will be acquiring multi-use easements on properties adjoining the Authority right-of-way, for uses, among others, of current and future slope construction, drainage structures, multi-use trails, access control, sight distance control, access, as well as installation, construction, reconstruction, relocation, maintenance and enlargement of utilities (such individual multi-use easements are collectively referred to herein as the "MUE"); and

WHEREAS, the Board desires to maintain the utility of the MUE for all public highway purposes as defined in § 43-4-501 *et seq.*, C.R.S., including but not limited to the purposes stated above and still allow for landscape and landscape-related improvements within the MUE.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
THE E-470 PUBLIC HIGHWAY AUTHORITY AS FOLLOWS:**

The Board hereby adopts the E-470 Multi-Use Easement Landscape and Improvements Policy (the "Policy") attached hereto as Exhibit A and incorporated by this reference. The Executive Director and his or her designee shall have the authority to develop, approve and implement procedures, standards and agreements necessary to carry out the Policy.

DONE AND ADOPTED this 12th day of September, 2002,
by the Board of Directors of the E-470 Public Highway Authority.

Noel D. Bensch
Chairman

ATTEST:

T. E. [Signature]

EXHIBIT A

E-470 MULTI-USE EASEMENT LANDSCAPE AND IMPROVEMENTS POLICY

The E-470 Public Highway Authority (E-470) acquired multi-use easements (MUE) adjacent to the tollway right-of-way for current and future slope construction, drainage structures, multi-use trails, access control, sight distance control, right of access, as well as installation, construction, reconstruction, relocation, maintenance and enlargement of utilities. In general, the entire MUE is reserved for slope construction, drainage structures, access control and sight distance control. In general, a contiguous 50 feet of the MUE is reserved for accommodation of utilities and 25 feet of the MUE is reserved for trail construction. Surface uses by underlying property owners shall not interfere with potential uses by E-470. The following permitted uses will be allowed within the MUE and are provided as guidance concerning improvements that will not interfere with E-470 uses of the MUE.

1. The 50 feet of the MUE reserved for utilities (utility zone):
 - a. Landscaping shall consist of native grasses and drought tolerant shrubs.
 - b. Irrigated grasses and shrubs are allowed if irrigated by systems constructed outside of the 50-foot area.
 - c. Irrigation trunk service lines will be allowed to cross the 50-foot area reserved for utilities.
2. The remaining width (typically 25 feet) of the MUE not reserved for utilities (landscape zone):
 - a. Landscape may consist of all grasses, shrubs and trees.
 - b. Irrigation systems are allowed.
 - c. Paved parking may be permitted in a portion of the outside 25 feet of the MUE if there is no interference with the design or placement of multi-use trails or future slope or drainage structure construction.

No structures shall be placed or constructed within the MUE. All improvements (including landscaping) within the MUE are allowed by E-470 Permit only; provided such improvements (including landscaping) conform to the regulations and ordinances of the local jurisdiction. Provision for equestrian use of the trails may require modification to the general location of the recreation trail. E-470 may consider exceptions to the general provisions of this policy.

Appendix A-4

Resolution 04-01 Establishing a Policy Regarding Trespassers

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY**

Establishing A Policy Regarding Trespassers

WHEREAS, the Authority was created pursuant to the Public Highway Authority Law, Sections 43-4-501, *et seq.*, C.R.S., to finance, construct, operate and maintain the E-470 Public Highway (the "Highway"); and

WHEREAS, pursuant to section 43-4-505(3)(c), C.R.S., the Board of Directors (the "Board") is authorized to pass resolutions "necessary for the government and management of the affairs of the authority and the execution of the powers vested in the authority"; and

WHEREAS, the Board finds that establishing and implementing a trespass policy is necessary for the operation and maintenance of the Highway and that the policy will promote the safety of the public traveling on the Highway and the protection of the Highway and other fee and easement property and facilities owned and operated by the E-470 Public Highway Authority (the "Authority").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE E-470 PUBLIC HIGHWAY AUTHORITY:

1. No person shall be allowed on the Highway or any Authority fee or easement property (collectively, the "E-470 Property"), for any purpose other than transportation, unless such person has in his or her possession a valid, current E-470 Construction Permit or E-470 Access Permit. Any such person not possessing a valid, current permit may be deemed a trespasser, except that nothing herein shall deem as a trespasser a law enforcement or emergency services agent or Authority contractor acting in the course of his or her duties.

2. In the event of an emergency, a utility company that owns an existing utility facility in or on E-470 Property may enter E-470 Property without an E-470 Construction Permit or E-470 Access Permit to remedy the emergency, provided that the utility company shall notify the Authority's command center immediately by telephone and that it shall provide a written report of the emergency within 72 hours thereafter to the Authority.

3. The Executive Director of the Authority, or his or her designee, is hereby authorized to take any of the following actions, in his or her discretion, against a trespasser:

- A. Issue a written warning to the trespasser explaining the requirement to obtain a permit before entry onto E-470 Property.
- B. Issue an order to cease and desist trespassing or performing any activity on E-470 Property and to immediately exit E-470 Property.

- C. Impose a fine in an amount no greater than twice the amount of the applicable permit fee per unauthorized entry, based on the totality of the circumstances, including the danger posed to individuals traveling on the highway and whether the individual or other persons employed by the individual's employer has trespassed on E-470 Property before.
- D. Contact law enforcement agents and request that the trespasser be prosecuted for third degree criminal trespass and any other relevant criminal offenses.
- E. Commence a civil action.

4. The Authority may remove any unauthorized work or improvements installed by a trespasser, at the trespasser's expense. The Authority may also bar a trespasser from any entry onto E-470 Property until he/she has paid all imposed fines and any expenses related to the removal of unauthorized work.


5. If the individual trespasser is an agent, employee, officer, contractor or subcontractor of a utility company or of a utility company's contractor, the Authority may also impose a fine against the utility company and/or the contractor in an amount no greater than twice the amount of the applicable permit fee per unauthorized entry. The Authority may bar the utility company and/or contractor from entering E-470 Property until it has paid all imposed fines and has applied for and received a valid E-470 Construction Permit or E-470 Access Permit.

6. The Executive Director shall have the responsibility and authority to direct legal counsel to commence a civil action and to develop, approve and implement procedures, standards, forms of orders and agreements necessary to carry out these policies.

DONE and adopted this 8th day of April, 2004, by the Board of Directors of the E-470 Public Highway Authority.


Chairperson

ATTEST:



Appendix A-5

Resolution 04-04 Establishing A Policy Prohibiting Discharge of Non-Stormwater into Storm Sewer System

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY**

**Establishing A Policy Prohibiting Discharge of Non-Stormwater
into Storm Sewer System**

WHEREAS, the E-470 Public Highway Authority (the "Authority") was created pursuant to the Public Highway Authority Law, sections 43-4-501, *et seq.*, C.R.S., to finance, construct, operate and maintain the E-470 Public Highway ("E-470"); and

WHEREAS, pursuant to section 43-4-505(3)(c), C.R.S., the Board of Directors (the "Board") is authorized to pass resolutions necessary for the government and management of the affairs of the Authority and the execution of the powers vested in the Authority; and

WHEREAS, the Colorado Department of Public Health and the Environment has issued the Authority a CDPS General Permit for Stormwater Discharges Associated with Cherry Creek Reservoir Drainage Basin Municipal Separate Storm Sewer Systems (MS4s), Permit No. COR-090000, authorizing the Authority to discharge stormwater into Cherry Creek and Cherry Creek Reservoir (the "Permit"); and

WHEREAS, Part I, Section B(3) of the Permit requires the Authority to develop, implement and enforce a program to detect and eliminate illicit discharges into municipal storm sewer systems; and

WHEREAS, as part of the illicit discharge program, the Authority must "to the extent allowable under State or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system, and implement appropriate enforcement procedures and actions;" and

WHEREAS, for the purpose of this Resolution the term "stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage; and

WHEREAS, the Board intends for this Resolution to fulfill the Permit requirements and to establish the Authority's procedure for enforcing the prohibition on discharging non-stormwater into the storm sewer system; and

WHEREAS, the Board finds that establishing and implementing a policy prohibiting non-stormwater discharges is necessary for the operation and maintenance of E-470 and that the policy will promote the safety of the public traveling on E-470 and the protection of the property and facilities owned and operated by the Authority; and

WHEREAS, the Authority entered into that certain *Agreement to Provide Traffic and Law Enforcement on E-470* with the Colorado State Patrol, dated October 10, 2002 (the

“Agreement”), pursuant to which the Colorado State Patrol agreed to provide traffic and law enforcement on E-470. The Agreement provides that the “State Patrol shall enforce all applicable laws of the State of Colorado on E-470, in accordance with State Patrol policies, rules, and procedures. In addition, the State Patrol shall enforce all lawful policies promulgated by the Authority;” and

WHEREAS, Colorado State Patrol officers are explicitly authorized, empowered, and directed, pursuant to section 18-4-511(7), C.R.S., to enforce the provisions of the section 18-4-511, C.R.S. (the “Colorado Littering Statute”); and

WHEREAS, the Colorado Littering Statute prohibits depositing, throwing or leaving any litter—including all waste material, debris or other foreign substance, solid or liquid, of every form, size, kind and description—on any public or private property or in any waters; and

WHEREAS, the Authority desires for the Colorado State Patrol to enforce the Colorado Littering Statute against individuals who violate the prohibition on discharging non-stormwater into the storm sewer system contained herein; and

WHEREAS, Arapahoe County, Douglas County, the City of Aurora and the Town of Parker are members of the Authority, and segments of E-470 running through Arapahoe County, Douglas County, the City of Aurora and the Town of Parker are subject to the Permit; and

WHEREAS, Arapahoe County, Douglas County, the City of Aurora and the Town of Parker each have a policy or procedure for enforcing prohibitions on illicit discharges into storm sewer systems; and

WHEREAS, the Aurora City Code, section 138-439, makes it unlawful to discharge to the storm drainage system any polluting material or any other material not composed entirely of stormwater; and

WHEREAS, the Town of Parker prohibits depositing, throwing or placing any litter upon any street, public property or public place in the Town except in public receptacles or authorized private receptacles, pursuant to section 06.01.090 of the Town Code, and prohibits creating, operating, maintaining or conducting any nuisance, pursuant to section 06.01.070 of the Town Code. “Litter” is defined as including any liquid except clean water, and “public nuisance” is defined as including “Any unlawful pollution or contamination of any surface or subsurface waters in the Town, or of the air, or of any water, substance or material intended for human consumption.” Section 6.01.020(2) of the Town Code; and

WHEREAS, Douglas County prosecutes individuals who have discharged non-stormwater under the Colorado Littering Statute; and

WHEREAS, Arapahoe County prosecutes individuals who have discharged non-stormwater under either the Colorado Littering Statute or the County Zoning Code; and

WHEREAS, as a secondary enforcement mechanism, the Authority will cooperate with local law enforcement agents from City of Aurora, Town of Parker, Douglas County and Arapahoe County, which jurisdictions are included in the Cherry Creek Basin, to enforce the discharge policy set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE E-470 PUBLIC HIGHWAY AUTHORITY:

1. No person shall discharge, spill, dump or dispose of any material, other than stormwater, into a storm sewer system within the boundaries of the Authority.

2. Notwithstanding any provision to the contrary, unless the Authority or the Water Quality Control Division of the Colorado Department of Public Health and Environment identify them as significant sources of pollutants to the waters of the state, discharging, spilling, dumping or disposing of the following is not prohibited:


landscape irrigation flows, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, drainage collected by foundation drains, air conditioning condensation, irrigation water, spring water, discharge from crawl space pumps, drainage collected by footing drains, flows from lawn watering, flows from individual residential car washing, individual residential swimming pool and hot tub discharges, discharge from individual residential street washing, flows from water-line flushing, flows from riparian habitats and wetlands, and flows from emergency fire fighting activities; and street wash water associated with construction activities pursuant to a current, valid E-470 Construction Permit that authorizes such discharges, provided that the permittee develops and implements appropriate control measures, approved by the Authority, to minimize the impacts from this source.

3. The Authority will enlist the assistance of the Colorado State Patrol, pursuant to the Agreement, in enforcing the State Littering Statute against any person who deposits, throws or leaves any material, other than stormwater, into a storm sewer system within the boundaries of the Authority in violation of the policy contained herein.


4. As a secondary enforcement measure, the Authority shall work with local law enforcement agents from the City of Aurora, Town of Parker, Douglas County and Arapahoe County to ensure enforcement of the prohibition on discharging non-stormwater within the boundaries of the Authority.

5. The Executive Director shall have the responsibility and authority to develop, approve and implement procedures, standards and agreements necessary to carry out these policies.

DONE and adopted this 11th day of November, 2004, by the Board of Directors of the E-470 Public Highway Authority.


Chairperson

ATTEST:



E-470/RESO
CRS1735
0029.0007

Appendix A-6

Resolution 05-01 Regarding Interchange and Transverse Roadway Grade Separation Locations

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY

Regarding Interchange and Transverse Roadway Grade Separation Locations

WHEREAS, the E-470 Public Highway Authority (the "Authority") was established in accordance with the laws of the State of Colorado and by the political subdivisions which have executed the Authority's Establishing Contract (the "Members") for the purposes of financing, constructing and operating a tolled beltway on the eastern perimeter of the Denver metropolitan area ("E-470"); and

WHEREAS, the Board of Directors (the "Board") has established, by its prior resolutions, the location of the interchanges and transverse roadway grade separations which shall be components of E-470 and wishes to update and confirm the list of approved locations of interchanges and grade separations; and

WHEREAS, the Board has established policies regarding modification of access to E-470 and has enacted a policy concerning the acceleration of construction of interchanges when payment of construction costs by entities other than the Authority is provided; and

WHEREAS, the Board wishes to establish a policy for the consideration of modification of approved interchange and grade separation locations; and

WHEREAS, various parties, including political subdivisions which are Members, other public entities and owners of property adjacent to or benefited by E-470 have requested or may request that the Authority authorize or alter authorization of interchange and grade separation locations; and

WHEREAS, the Board wishes to establish a process by which it may consider approval and/or modification of interchange and grade separation locations.

NOW, THEREFORE, be it resolved by the Board as follows:

1. The locations of the interchanges and grade separations interfacing with transverse roadways listed on Exhibit A, attached hereto and incorporated herein by reference, are approved and confirmed. Neither this resolution nor any prior action of the Board shall be construed as a

05-01

commitment by the Authority to construct any interchange or grade separation at any specific time or at any time. Actual construction of interchanges and grade separation shall be subject to financing, engineering requirements, feasibility and demand.

2. The Board in its sole discretion may modify the list of approved interchanges and grade separations as it determines may be necessary or convenient.

3. The Board adopts the E-470 Interchange and Grade Separation Designation Modification Consideration Process attached hereto as Exhibit B and incorporated herein by reference, which may from time to time be amended or modified to guide staff and others in requesting future modifications to the list of approved interchange and grade separation locations.

4. This Resolution shall supercede prior Board-approved lists of interchange and grade separation locations. Exhibit B hereto shall supercede any prior statement of process concerning modification or designation of approved interchanges or grade separations. Neither shall create any right to reliance thereupon in any person or entity and either may be changed by the Authority at anytime.

DONE and adopted this 13th of January, 2005, by the Board of Directors of the E-470 Public Highway Authority.


Chairperson

Attest:



05-01

Exhibit A

Approved Locations for Interchanges and Grade Separations

Approved Locations for Interchanges:

I-25 (South)
Jamaica Street
Peoria Street
Chambers Road
Jordan Road
Parker Road
Gartrell Road
Smoky Hill Road
Quincy Avenue
Jewell Avenue
Sixth Parkway
I-70
48th Avenue (future)
56th Avenue
64th Avenue.
Pena Boulevard
88th Avenue (future) (approved for one half diamond interchange, with south ramps)
96th Avenue
104th Avenue
112th Avenue (future)
120th Avenue
I-76
Potomac Street (future)
US 85
Quebec Street (future)
Colorado Boulevard
York Street
I-25 (North)

Approved Locations for Grade Separations:

Cottonwood Drive
South Aurora Parkway (future)
Ireland Way
Arapahoe Road
Bellevue Avenue (future)
Hampden Avenue
State Highway 30
Smith Road
26th Avenue

05-01

48th Avenue (existing grade separation, approved for future interchange)
88th Avenue (existing grade separation, approved for future one half diamond interchange)
112th Avenue (existing grade separation, approved for future interchange)
Tower Road
Buckley Road
Cameron Road
Sable Boulevard
Old Brighton Road
Riverdale Road
Quebec Street (existing grade separation, approved for future interchange)
Holly Street
Washington Street

Exhibit B

E-470 INTERCHANGE AND GRADE SEPARATION DESIGNATION MODIFICATION CONSIDERATION PROCESS

This process has been established by the E-470 Public Highway Authority Board of Directors for use by persons desiring that the Board consider modification of designation of interchanges and grade separations previously made by the Board.

Step 1: Request

Modification consideration may be commenced by a written request submitted by any person or entity, private or public in nature. If initiated by a private person or entity or by a public entity other than a county or municipal subdivision which is a member of the Authority and which has land use jurisdiction over property adjoining the interchange or grade separation, existing or proposed (the "Proposer"), the Proposer shall first submit the written request to the county or municipal subdivisions with such jurisdiction (the "Local Government" in the singular, the "Local Governments" in the plural), with a copy thereof to the Authority. If a Local Government is proposing a modification, it shall commence the consideration thereof by submitting a written request to the Authority, with a copy to any other Local Governments.

A request shall include the following information:

- A. A sketch of the change in interchange or grade separation (e.g., an interchange layout).
- B. The location of the requested interchange or grade separation in relation to approved interchange and grade separation locations.
- C. The anticipated dates for start of construction and opening to traffic and any phasing of construction.
- D. The estimated construction cost.
- E. The proposed funding source.

Step 2: Referral of Request by Local Governments

If a Local Government wishes the Authority to consider a Proposer's request, the Local Government may refer the request to the Authority for review and comment concurrent with the Local Government's own review process. If a Local Government is requesting consideration, it may refer its request to the Authority at any time.

Step 3: Indication of Consideration

The Authority's Board of Directors will give initial consideration to the request and advise the Proposer and the Local Governments whether it intends to give further consideration to the request. Unless waived by the Board of Directors, in order for the Authority to give further consideration to the request, the Local Governments must invite the Authority to participate in

05-01

all reviews by the Local Governments of the interchange or grade separation designation modification.

Step 4: Feasibility Study Parameters

A feasibility study will be required for any proposed interchange modification unless specifically waived by the Board in whole or in part. A feasibility study will not be required for a proposed grade separation modification unless specifically requested by the Board. Unless the Board shall determine otherwise, whenever a feasibility study is required it shall indicate the following parameters:

- A. Who will supervise and conduct the study.
- B. The time in which the study is to be completed.
- C. Such other parameters as the Board shall deem appropriate.

Step 5: Feasibility Study

Unless determined otherwise by the board of Directors, a feasibility study shall:

- A. If the modification request is to add a facility, demonstrate the physical possibility of constructing the interchange or grade separation at the location requested and evaluate design concepts, recommending a preferred option.
- B. Identify the traffic impacts on E-470 and the regional and sub-regional roadway systems with and without the requested modification.
- C. Identify the compatibility of the request in relation to existing public entity plans, including local land use plans, as well as E-470's ultimate configuration.
- D. Evaluate the benefits of the modification in relation to its cost or savings, both initial and recurring.
- E. If the modification request is to add a facility, describe the probable methods and sources of funding for construction, right-of-way, maintenance and operations of the facility and associated infrastructure, and Local Governments' and private sector contributions thereto.
- F. Present existing and target year land use data in a format consistent with transportation modeling.
- G. Present existing and target year transportation data (e.g., functional classification, lanes, intersection control).

Step 6: Submissions by Local Governments

The Local Governments may submit, and the Authority will consider, the following items in support of a request:

- A. A feasibility study.
- B. A summary of written comments on the subject received by the Local Governments.
- C. A summary of comments presented at all public hearings on the subject.
- D. The Local Governments' endorsement and arguments for a request.

05-01

Step 7: Decision on Request

The Authority's Board of Directors may accept, reject or take no or other action on the request.

Appendix A-7

Resolution 05-04 Concerning Charges for Use of Authority Property

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
E-470 PUBLIC HIGHWAY AUTHORITY**

Concerning Charges for Use of Authority Property

WHEREAS, the E-470 Public Highway Authority (the "Authority") was created pursuant to the Public Highway Authority Law, Sections 43-4-501, *et seq.*, C.R.S., to finance, construct, operate and maintain the E-470 Public Highway ("E-470"); and

WHEREAS, the Authority has the power to construct, finance, operate and maintain public highways pursuant to Section 43-4-506(1)(f), C.R.S., and the definition of public highway includes the beltway and other real and personal property, including easements and rights-of-way, pursuant to Section 43-4-503(12), C.R.S.; and

WHEREAS, the Board of Directors (the "Board") is authorized to pass resolutions necessary for the government and management of the affairs of the Authority and the execution of the powers vested in the Authority, pursuant to Section 43-4-505(3)(c), C.R.S.; and

WHEREAS, by Resolution 02-07, the Board authorized the use of the Authority multi-use easement for specified landscaping purposes subject to obtaining a permit; and

WHEREAS, the Board has authorized the charging of an administrative review fee in connection with permitting use of the Authority's multi-use easements for longitudinal and transverse utility installations; and

WHEREAS, pursuant to the Board's authorizations to charge an administrative review fee, the Authority currently charges an administrative review fee in the amount of \$750.00 per permit application; and

WHEREAS, by Resolution 04-05, the Board authorized and restated the consideration due the Authority for permitting use of the Authority's multi-use easements as \$75,000 per acre for longitudinal utility installations and transverse utility installations; and

WHEREAS, pursuant to the Board's authorizations to charge for permitting use of the Authority's multi-use easements, and subject to the provisions of Resolution 02-06, the Authority charges a use fee, also referred to as a permit fee, in the amount of \$75,000/acre; and

WHEREAS, transverse utility installations necessarily cross the Authority's fee property; and

WHEREAS, to the extent necessary, and subject to the terms of the grant of authority delegated to the Executive Director herein, the Board desires to clarify that the consideration due the Authority for permitting use of the Authority's fee property for utility installations is \$75,000

per acre, subject to the provisions of Resolution 02-06 Regarding Accommodation of Utilities in the Right-of Way (exempting member jurisdictions and related entities from permit fee charges for transverse utility installations); and

WHEREAS, the Authority receives requests for permission to use the Authority's multi-use easements and fee property for purposes other than utility installations, per se; and

WHEREAS, to the extent necessary, and subject to the terms of the grant of authority delegated to the Executive Director herein, the Board desires to clarify that the consideration due the Authority for permitting use of the Authority's fee property for certain purposes other than utility installations, per se, is \$75,000 per acre; and

WHEREAS, from time to time circumstances associated with requests for permits to use the Authority's multi-use easements and fee property merit special consideration; and

WHEREAS, the Board desires to delegate to the Executive Director and, as his designee, the Director of Roadway and Land Management, the authority to waive or partially waive the administrative review charges and the permit fee charges for use of the Authority's multi-use easements and fee property under revocable permits where the Executive Director determines such waiver is merited.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE E-470 PUBLIC HIGHWAY AUTHORITY:

1. As a matter of clarification, the consideration due the Authority for permitting use of the Authority's multi-use easement and fee property for utility installations, subject to the terms of Resolution 02-06, is \$75,000 per acre. Except as stated herein and in Resolution 02-06, as the same may be amended from time to time, the Executive Director shall charge and collect a permit fee of \$75,000/acre for use of the Authority's multi-use easement and fee property for utility installations.

2. As a matter of clarification, landscaping permitted and installed in accordance with the provisions of Resolution 02-07, as the same may be amended from time to time, shall be permitted without charging and collecting a permit fee, provided however that the Authority shall charge and collect an administrative review fee.

3. The Executive Director is authorized to grant revocable permits to use the Authority's multi-use easements and fee property for purposes other than utility installations, per se, and shall, except as stated herein, charge as consideration for such use a permit fee of \$75,000 per acre.

4. Except as stated herein, the Authority shall charge and collect from persons applying for permits to use the Authority's multi-use and fee property, for any use, an administrative review fee in an amount to be determined by the Executive Director.

5. Upon written application to the Director of Roadway and Land Management by a person wishing to use Authority property for a non-utility use, and upon recommendation by the Director of Roadway and Land Management, the Executive Director, may waive or partially waive the permit fee due the Authority for use of the Authority's multi-use easements and fee property for purposes other than utility installation, such purposes to include by way of illustration but not limitation; grading for drainage purposes, installing drainage improvements, widening of cross streets, and erecting temporary traffic control devices; when, and if, the Executive Director determines such waiver is merited.

6. Upon written application to the Director of Roadway and Land Management by a person wishing to use Authority property for a non-utility use, and upon recommendation by the Director of Roadway and Land Management, the Executive Director may waive or partially waive the administrative review fee due the Authority for reviewing applications to use the Authority's multi-use easements and fee property for purposes other than utility installations, such purposes to include by way of illustration but not limitation: erecting temporary traffic control devices, when, and if, the Executive Director determines such waiver is merited.

7. Where the Executive Director is required to charge and collect a permit fee of \$75,000/per acre, the Executive Director is hereby authorized to accept materials/services and/or other things of value to the Authority in lieu of cash payment up to an amount equal to the level of the Executive Director's spending authority which authority has been delegated by the Board and as the Board may increase the same from time to time.

8. The Board hereby directs legal counsel to make such revisions to the 2004 Utilities Procedures Manual and such other Authority policy and procedure manuals as applicable in order to incorporate the provisions of this Resolution.

DONE and adopted this 14th day of July, 2005, by the Board of Directors of the E-470 Public Highway Authority.


Chairperson

ATTEST:



E-470/RESO
EMS0651
0029.0007

APPENDIX B

E-470 PUBLIC HIGHWAY AUTHORITY COMMON USE AGREEMENT

E-470 PUBLIC HIGHWAY AUTHORITY

COMMON USE AGREEMENT

This COMMON USE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____ 20____, by and between the E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado (the "Authority") and, _____ (the "Licensee").

RECITALS

WHEREAS, the Authority is the owner of fee property and multi-use easements related to the E-470 Public Highway; and

WHEREAS, the Authority's fee ownership includes a nominal three hundred foot (300') wide E-470 Public Highway roadway right-of-way (the "E-470 ROW") and certain parcels of real property acquired in conjunction with the Authority's acquisition of the E-470 ROW but not presently used for the Authority's operations (the "Remnant Parcels"); and

WHEREAS, the Authority has also purchased an additional seventy-five foot (75') wide corridor in either fee ownership or in multi-use easement for future utilities, landscaping, or multi-use trails and, for purposes of this Agreement, the term "Utility Corridor" shall mean that seventy-five foot (75') wide corridor that abuts and is located immediately adjacent to and generally east and west of the E-470 ROW; and

WHEREAS, for purposes of this Agreement, the term "Authority Property" shall include the Utility Corridor, Remnant Parcels, and the E-470 ROW; and

WHEREAS, the Licensee is a _____ which intends to provide for various facilities, appurtenances, improvements, and _____, including, without limitation, _____, as more particularly described and shown on **Exhibit A**, attached hereto and incorporated herein by this reference (the "Improvements") within _____, in _____, Colorado; and

WHEREAS, the Licensee desires permission from the Authority to use a portion of Authority Property for the purposes of constructing and maintaining the Improvements and the Authority has agreed to grant such permission subject to the terms and provisions set forth in this Agreement. That portion of Authority Property upon which the Improvements are to be located is described on **Exhibit B**, attached hereto and incorporated herein by this reference and for the purposes of this Agreement shall be defined as the "Common Use Area". That portion of Authority Property upon which a temporary construction area of common use of _____ fee (_____) in width will be located is described on **Exhibit C**, attached hereto and incorporated herein by this reference and for the purposes of this Agreement shall be defined as the "Temporary Area"; and

WHEREAS, the presence in the Common Use Area of the Improvements and the use of those Improvements strictly in accordance with the terms and conditions set forth in this Agreement are not expected to adversely affect the stability, integrity, operational characteristics, or safety of the E-470 Public Highway; and

WHEREAS, the Authority's operation of the traveled portion of the E-470 ROW and other use of the Authority Property will not adversely affect the stability, integrity, operational characteristics, or safety of the Improvements within the Common Use Area; and

WHEREAS, the Authority and the Licensee acknowledge and agree it is in their mutual interest to identify their respective rights and obligations in and to the Temporary Area and the Common Use Area order to avoid conflict and to agree to the terms for maintaining the Temporary Area, the Common Use Area and the Improvements within the Common Use Area.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

AGREEMENT

The Recitals set forth above are hereby incorporated into the covenants and agreements set forth below.

1. CONSIDERATION. In addition to the other consideration contained in this Agreement and simultaneously with the execution of this Agreement, the Licensee agrees to pay the Authority [REDACTED] Dollars (\$ [REDACTED]) per acre, or pro-rata portion thereof, for the area contained within the Common Use Area, [REDACTED] Dollars (\$ [REDACTED]) per acre, or pro-rata portion thereof, for the area contained within the Temporary Area, and a one-time administrative fee of Seven Hundred and Fifty Dollars (\$750.00) on or before such time that the Licensee submits to the Authority the E-470 Construction Permit application related to the Improvements.

2. USE AND OCCUPANCY OF TEMPORARY AREA & COMMON USE AREA BY LICENSEE. The Licensee and its officers, agents, employees, designees, contractors, guests, invitees, successors, and assigns and all those acting by or on behalf of the Licensee are hereby granted a non-exclusive license to use and occupy the Common Use Area for the purposes of constructing and maintaining the Improvements. All construction and maintenance activities undertaken by the Licensee shall be completed at the Licensee's sole cost and expense and the Licensee shall be responsible for obtaining any and all required approvals and permits associated with construction and maintenance of the Improvements from the Authority and all applicable local, state, and federal governments. Construction and maintenance of the Improvements shall be subject to and in compliance with the E-470 Public Highway Authority Permit Manual, as amended from time to time, which is hereby incorporated into this Agreement by this reference (the "E-470 Permit Manual") and the terms of the E-470 permits which the Licensee must obtain for construction and maintenance of the Improvements. The construction of the Improvements will be generally in accordance with Exhibit A. The

Licensee and its officers, agents, employees, designees, contractors, guests, invitees, successors, and assigns and all those acting by or on behalf of the Licensee are hereby granted a non-exclusive and temporary right to enter, use, and occupy the Temporary Area for the purposes of constructing the Improvements. Such temporary right shall expire at such time as the construction of the Improvements is completed. The Licensee's right to use the Temporary Area and the Common Use Area shall be subject to the following limitations:

A. Access Restriction. The Licensee shall not at any time access the Temporary Area, the Common Use Area and/or the Improvements from the E-470 ROW, except in those instances when specific prior written approval has been given by the Authority, or during an emergency involving a significant and imminent threat to life or to the public health or safety. The Authority may specify reasonable conditions to the Licensee's access to the Temporary Area and/or the Common Use Area for the protection of the E-470 ROW and the public traveling thereon. In all cases involving the Licensee's access of the Temporary Area or the Common Use Area from the E-470 ROW, the Licensee shall give due consideration to the fact that the E-470 ROW is utilized by the traveling public. In the event of an emergency, in addition to calling 9-1-1, as necessary, the Licensee shall notify the appropriate police and emergency authorities and the E-470 Public Highway Authority Communications Center, (303) 537-3409 immediately and provide the Authority a written report on the emergency situation as soon as practical thereafter.

B. Public Safety. At all times while using or accessing the Temporary Area or the Common Use Area, the Licensee and its officers, agents, employees, designees, contractors, guests, invitees, successors, and assigns and all those acting by or on behalf of the Licensee shall take all actions necessary to protect the public health and safety and shall comply with the E-470 Permit Manual. Additionally, the Licensee shall maintain insurance complying with Section 3, below, at all times while this Agreement is in effect, and the Licensee agrees to indemnify the Authority as provided in Section 4, below.

C. Existing Authority and Third Party Facilities and Easements. The Licensee hereby agrees that any presently existing facilities and/or improvements within the Temporary Area and/or the Common Use Area do not interfere with the Licensee's ability to construct, maintain, or operate the Improvements. To the extent that such presently existing facilities and/or improvements within the Temporary Area and/or the Common Use Area are found by the Licensee to interfere with the Licensee's ability to construct, maintain, and/or operate the Improvements, the Licensee agrees to resolve such matters of interference by modifying the Improvements and/or obtaining the agreement of all necessary parties for relocation and/or reconstruction of such interfering facilities and/or improvements with the owner of such facilities, and at no cost to the Authority.

D. Future Third Party Facilities within the Common Use Area. The Licensee hereby acknowledges and agrees that the Authority may, from time to time, issue rights for use and occupancy to third parties within the Common Use Area and that the Authority shall not be held responsible for any damages to the Improvements resulting from the granting of such rights.

E. Restoration and Maintenance. The Licensee agrees that it is its sole responsibility to maintain and repair, as necessary, the Improvements in order to ensure the Improvements are and remain in good repair and aesthetically pleasing. Should the Authority, in its sole discretion, consider the Licensee's maintenance and/or lack of maintenance unacceptable, the Authority shall provide the Licensee a written notice that identifies the Authority's specific concerns. The Licensee shall have ten (10) days after receipt of such written notice to remedy the Authority's concerns. If the Authority's concerns are not remedied to the Authority's satisfaction within ten (10) days, the Authority may take action to have the concerns remedied or remedy the concerns on its own accord and the Licensee shall be responsible to reimburse the Authority for costs incurred by the Authority in taking such action. Additionally, the Authority may thereafter elect to terminate this Agreement pursuant to the provisions of Section 10, by providing the necessary notice of default to the Licensee. The Licensee further agrees that, after it has exercised use of the Temporary Area and/or the Common Use Area for any construction, maintenance, operation, and/or repair of the Improvements, as applicable, in any manner that disturbs the Temporary Area and/or the Common Use Area, it will restore the Temporary Area and/or the Common Use Area to the condition in which it was prior to that disturbance, except as necessarily disturbed to accommodate the Improvement and as agreed to by the Authority.

3. INSURANCE COVERAGE. The Licensee shall obtain insurance covering the activities set forth in the Agreement as provided in this Section:

A. General Requirements. The Licensee shall acquire and maintain in full force and effect, during the entire term of the Agreement, inclusive of warranty periods, if any, and extensions of the Agreement term, if any, the minimum insurance coverages and limits set forth in Section 3(B) in order to protect the Authority including its directors, officers, employees, agents, and the Licensee from claims that arise out of or result from the operations under this Agreement by the Licensee or by a subcontractor of the Licensee or anyone acting on their behalf or for which they may be liable. Failure to maintain the insurance policies, or to provide evidence of renewal of the required policies, is a material breach of this Agreement. All insurance shall be primary insurance and non-contributory with respect to all other available insurance sources and shall be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted in writing by the Authority. The Authority and its respective directors, officers, employees, and agents shall be named as additional insureds as provided in Section 3(D). The Licensee shall request its insurer to amend or endorse its insurance policy to provide that the insurer will give the Authority sixty (60) days' written notice prior to the cancellation, non-renewal, or material modification of any policy of insurance obtained to comply with this Section. In addition, the Licensee shall immediately upon receipt provide the Authority a copy of any notice of cancellation, non-renewal, or material modification of any policy of insurance obtained to comply with this Section.

B. Minimum Insurance Coverages. This Section shall incorporate and include all of the following required coverage (if and as indicated):

1. *Workers' Compensation Insurance.* Workers' compensation insurance with coverage in accordance with applicable law, including employers' liability with minimum limits of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) Disease-Policy Limit, and One Million Dollars (\$1,000,000.00) Disease each employee.

Included: Yes ☒ No ☐

2. *Commercial General Liability Insurance.* Commercial general liability insurance with coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence; Two Million Dollars (\$2,000,000.00) annual aggregate; and One Million Dollars (\$1,000,000.00) products and completed operations aggregate. Coverage shall be on an ISO Form GL-001 (4/2013 edition or equivalent), shall include all major divisions of coverage, and shall be on a comprehensive basis, including:

- a. Premises and operations;
- b. Personal injury liability;
- c. Contractual liability;
- d. Property damage; and
- e. Independent contractors' coverage.

Included: Yes ☒ No ☐

In addition the Licensee shall provide commercial liability insurance endorsements as follows:

- a. Endorsement CG 20 37 (4/2013 edition, or equivalent) - products and ongoing and completed operations; (construction, installation, repair – operational equipment/property only)

Included: Yes ☐ No ☐

- b. Explosion, collapse, and underground (construction only);

Included: Yes ☐ No ☐

- c. Contractors' limited pollution coverage (construction only);

Included: Yes ☐ No ☐

- d. Endorsement CG 25 03 (dated as of 5/2009) or equivalent; general aggregate applies on a per project basis (construction only).

Included: Yes ☐ No ☐

3. *Commercial Automobile Liability Insurance.* Commercial automobile liability insurance with coverage in the amount of One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage, each accident covering owned, leased, hired, and non-owned vehicles, including employee vehicles.

Included: Yes ☒ No ☐

4. *Contractor's Pollution (Environmental) Liability.* Contractor's pollution (environmental) liability insurance with coverage written on an occurrence or claims-made policy form, with a minimum [REDACTED] Million Dollars (\$[REDACTED]) per occurrence limit of liability. Policy shall insure for bodily injury, property damage, defense, and environmental cleanup as a result of pollution conditions.

Included: Yes ☐ No ☐

5. *Excess Liability Coverage.* Excess liability insurance with coverage, beyond that of the general liability, automobile liability and employers' liability coverages required herein, in the amount of at least [REDACTED] Million Dollars (\$[REDACTED]) combined single limit bodily injury and property damage, per occurrence, and [REDACTED] Million Dollars (\$[REDACTED]) annual aggregate. Separate aggregates need to be structured as found in the underlying coverages.

Included: Yes ☒ No ☐

C. Waiver of Subrogation. All coverages specified herein shall waive any right of subrogation against the Authority and its directors, officers, employees, and agents.

D. Additional Insured Parties. The Authority and its directors, officers, employees, and agents shall be named as additional insureds by Endorsement ISO CG 20 10 (4/2013 edition or equivalent) on all policies (with the exception of workers' compensation insurance).

E. Certificates of Insurance. Prior to commencing any work on the Improvements, the Licensee shall provide the Authority with a certificate or certificates evidencing the coverages identified on the face of the certificate with the contract number for this Agreement, the name of the project, and copies of the additional insured endorsement and all other required endorsements. If the coverage required expires during the term of this Agreement, the Licensee shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.

F. Additional Provisions. Each liability policy including, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:

1. The Licensee's insurance coverage shall be primary insurance with respect to the Authority and its directors, officers, employees, and agents. Any insurance maintained by the Authority or its directors, officers, employees, and agents shall be in excess of the Licensee's insurance and shall not contribute to it.

2. The Licensee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.

3. No special exclusions that specifically name certain work activities, products, or services the Licensee is responsible for performing under the Agreement may be included as not being insured under the policy.

G. Compliance with Reporting Provisions. The Licensee shall comply with reporting provisions or other conditions of the policies required herein, and a failure to do so constitutes a breach of this Agreement. Any failure on the part of the Licensee to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Licensee to provide the required coverage to the Authority and its directors, officers, employees, and agents.

H. Claims-Made Policies. If any policy is a claims-made policy, the policy shall provide the Licensee the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. The Licensee agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. The Licensee's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under this Agreement. If the policy is a claims-made policy, the retroactive date of any such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Licensee purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the parties hereto.

I. No Limitation on Other Obligations. The procuring of required policies of insurance shall not be construed to limit the Licensee's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. The insurance obligations set forth in this Section are minimum coverage and limit requirements only. To the extent the Licensee maintains coverage and/or limits greater than these minimum requirements; such greater insurance coverage shall be applicable to the work on the Improvements and to any applicable liabilities and obligations of the Licensee under this Agreement. By specifying minimum insurance requirements, the Authority does not assert or recommend such insurance as being adequate for the work on the Improvements performed under this Agreement. The Licensee shall be solely responsible for any deductible losses under the policy.

J. Additional Risks and Hazards. If the Authority requests in writing that

insurance for risks other than those described herein or for other special hazards be included in property insurance policies, the Licensee shall obtain such insurance, if available, in a form and for a cost approved by the Authority, and the cost thereof shall be charged to the Authority.

K. Subcontractors. If the Licensee subcontracts any portion(s) of the work on the Improvements, the Licensee shall require that each subcontractor retained by the Licensee acquire and maintain insurance coverage as set forth in this Section. The Licensee shall require each subcontractor to provide to the Licensee insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section. The Licensee shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. The Licensee shall, upon Authority request, submit them to the Authority for review or audit. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

L. No Authority Duty to Verify or Review. Nothing in the Agreement or this Section shall impose upon the Authority any duty or obligation to verify the existence or adequacy of the insurance coverages maintained by the Licensee and the Authority shall not be responsible for any representations or warranties made by or on behalf of the Licensee to any insurance company or insurance underwriter.

4. **INDEMNIFICATION.** The Licensee shall indemnify, defend, and hold harmless the Authority and each of the governmental entities that is now or may in the future become a party to the Authority's establishing contract, and each of its directors, employees, agents, and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by, or with respect to third parties ("Any Claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Licensee or any of its subcontractors, material suppliers, agents, representatives, or employees, or the agents, representatives, or employees of any subcontractors or material suppliers, in connection with this Agreement, including, without limitation, Any Claims which cause or allow to continue a condition or event which deprives the Authority or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes. Provided, however, the Licensee shall not be liable for any claim, loss, damage, injury, or liability arising solely out of the intentional or negligent acts or omissions of the Authority, its directors, employees, agents, and consultants.

The obligations of the indemnifications extended by the Licensee to the Authority under this Section shall survive termination or expiration of this Agreement.

The Licensee's defense, indemnification, and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Licensee to defend in litigation, indemnify, or insure the Authority against liability for damage arising out of the death or bodily injury to persons or damage to property caused solely by the

negligence or fault of the Authority or any third party under the control or supervision of the Authority.

Insurance coverage requirements specified in this Agreement in no way lessen or limit the obligations of the Licensee under the terms of this Section. The Licensee shall obtain, at the Licensee's own expense, additional insurance, if any, required to satisfy the terms of this Section.

5. CONTRACTORS AND SUB-CONTRACTORS. The Licensee is solely and fully responsible to the Authority for its obligations under this Agreement. The Licensee shall include in its contracts with any of its contractors or sub-contractors performing work on the Improvements a provision stating that the contractor and/or sub-contractor "shall defend, indemnify, protect, and hold the E-470 Public Highway Authority (the "Authority") harmless from any and all liability, loss, cost, damage, claim, or expense which the Authority may sustain or incur by reason of entry onto the Authority's property or any third parties' property and/or by reason of work performed on the Authority's property or any third parties' property by contractor and/or its agents, representatives, subcontractors, or employees. The provisions of this Section shall survive termination of this agreement." Furthermore, the Licensee shall include in its contracts with any of its contractors or sub-contractors performing work on the Improvements the insurance required in Section 3 and the Licensee shall require such contractors and/or sub-contractors to provide adequate bonds that name the Authority as an additional obligee.

6. USE AND OCCUPANCY OF TEMPORARY AREA & COMMON USE AREA BY THE AUTHORITY. Notwithstanding any contrary provision, the Authority reserves all of its right and title to the Temporary Area and the Common Use Area and shall continue to have the full rights to use the Temporary Area and the Common Use Area for any purpose. The Authority has no obligation to provide notice of any third parties' intent to construct facilities within any part of the Temporary Area or the Common Use Area. The Authority and the Licensee shall mutually occupy and use said Temporary Area and Common Use Area in such a manner as not to unreasonably interfere with the rights of the other party.

7. OWNERSHIP OF TEMPORARY AREA & COMMON USE AREA. The Authority makes no warranty of title in connection with the Temporary Area or the Common Use Area and makes no representations or warranties related to fee title and rights in any Utility Corridor within the Temporary Area or the Common Use Area.

8. PUBLIC STREETS, ROADS, AND RAILWAYS NOT INCLUDED IN TEMPORARY AREA OR COMMON USE AREA. The Licensee acknowledges the Improvements may cross existing public streets, public roads, public highways, or privately owned railways which may not be part of the Temporary Area or the Common Use Area and are not within the governance or jurisdiction of the Authority. The Licensee shall bear responsibility to acquire all rights necessary for any reconstruction, relocation, repair, and/or maintenance of the Improvements from appropriate counties, municipal entities, the Colorado Department of Transportation, railroads, and/or others.

9. FUTURE RELOCATION OF IMPROVEMENTS. The Authority may require the Licensee to relocate all or any part of the Improvements upon the Authority's determination,

in its sole and reasonable discretion, that any portion of the Improvements should be relocated, reconstructed, adjusted, or removed from the Common Use Area. In this event, the Authority shall, not less than one hundred and eighty (180) days prior to the date on which the completion of same shall be required, notify the Licensee in writing of such necessity. Such relocation, reconstruction, adjustment, or removal shall occur at the sole expense of the Licensee. In the event the relocation of any of the Improvements will require easements located on property belonging to a third party in which the Authority does not own sufficient property interest to accommodate the relocation, the Authority and the Licensee will cooperate in obtaining the necessary interests for the reconstructed, relocated, or adjusted Improvements. The reasonable cost of these additional easements shall be borne by the Licensee. The Licensee shall provide the Authority with plans for the Licensee's proposed relocation, reconstruction, or adjustment and, upon approval thereof by the Authority, the Licensee, subject to the terms of any Authority approvals and permits, including construction permits, shall promptly proceed to effect such relocation, reconstruction, or adjustment. The parties agree to use their best efforts to meet the Authority's schedule. If the relocation, reconstruction, adjustment, or removal is not completed by the date required by the Authority, the Authority, without incurring liability, may perform the relocation, reconstruction, adjustment, or removal, and be reimbursed for said efforts by the Licensee. In the event that any of the Improvements will necessarily be required to be located outside the Common Use Area, the parties shall amend this Agreement and its Exhibit A to reflect any new configuration of the Common Use Area.

10. TERMINATION. The Authority shall have the right to terminate this Agreement for cause or convenience, in the Authority's sole and absolute discretion, by providing the Licensee with written notice, whereupon this Agreement shall terminate thirty (30) days after such notice is given. In the event of termination, the Authority may determine to either (1) require ownership of all the Improvements to be immediately conveyed to the Authority at no cost or (2) require that the Licensee, at its cost, restore the area to its previous condition by removing the Improvements and restoring the Temporary Area and/or the Common Use Area to its previous condition. To the extent necessary, the Licensee agrees to execute any additional documents required to effect conveyance of the Improvements at the time of termination or thereafter at the Authority's request. In the event of termination, the Authority shall have no obligation to maintain the Improvements.

11. DEFAULT. In addition to the termination provisions above, the Authority shall have the right to terminate this Agreement for cause if the Licensee fails to perform in accordance with the terms, covenants, and conditions of this Agreement, including, but not limited to, the failure to maintain the Temporary Area and/or the Common Use Area. In the event that the Authority deems the Licensee to be in default, it shall provide written notice to the Licensee indicating the event of default. The Licensee shall have thirty (30) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within thirty (30) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed sixty (60) days except by mutual written consent of the parties. In the event that the Licensee has failed to cure in accordance with this Section, the Authority shall have the right to terminate this Agreement for cause. The Authority may terminate by providing the Licensee with written notice of termination, whereupon this Agreement shall terminate upon the date of the notice. In the case of termination for cause, the Authority may determine to either

(1) require ownership of all the Improvements to be immediately conveyed to the Authority at no cost or (2) require that the Licensee, at its cost, restore the area to its previous condition by removing the Improvements and restoring the Temporary Area and/or the Common Use Area to its previous condition. To the extent necessary, the Licensee agrees to execute any additional documents required to effect conveyance of the Improvements at the time of termination or thereafter at the Authority's request. In the event of termination, the Authority shall have no obligation to maintain the Improvements.

12. MISCELLANEOUS.


A. Non-Assignability. The Licensee may not assign its rights or delegate its duties hereunder without the prior written consent of the Authority. The Authority may assign its rights or delegate its duties hereunder without the prior written consent of the Licensee.

B. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto, by the other party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal services, when received in the United States' mail, first-class postage prepaid addressed to:


The Authority:

E-470 Public Highway Authority
22470 East 6th Parkway
Aurora, CO 80018
Attn: Executive Director

The Licensee:


Attn: 

Either party may change its address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.

C. Controlling Law and Venue. The parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for  County, State of Colorado.

D. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

E. Governmental Immunity. Nothing in this Agreement or in any actions taken by the Authority pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes.

F. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the provisions of this Agreement that require continued performance, compliance, or effect after the termination hereof, shall survive such termination and shall be enforceable by the Authority if the Licensee fails to perform or comply as required.

G. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the parties hereto.

H. Entire Contract. This Agreement constitutes the entire agreement between the parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

I. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provisions.

J. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

K. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

L. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement signed by the parties.

M. Payment of Tolls. The Licensee understands and agrees that the Licensee, its subcontractors, vendors, and employees shall pay all tolls incurred by them during the term of this Agreement.

N. Recordation. The parties agree that this Agreement may be recorded in the records of the Clerk and Recorder for [REDACTED] County.

O. Runs with the Land. The rights and responsibilities set forth in this Agreement are intended to be covenants with respect to the real property so indicated and are to run with the land.

P. Survival of Representations. Each and every covenant, promise, and payment contained in this Agreement shall survive each and be binding and obligatory upon each of the parties and shall not merge into any deed, assignment, covenant, escrow agreement, easement, lease, or any other document.

[The remainder of this page left intentionally blank.]

E-470 PUBLIC HIGHWAY AUTHORITY

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By: _____
Its: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ and _____, as _____ and _____ of _____.

My commission expires: _____

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Exhibit A
IMPROVEMENTS

Exhibit B

COMMON USE AREA

Exhibit C

TEMPORARY AREA

E-470 PUBLIC HIGHWAY AUTHORITY

COMMON USE AGREEMENT

This COMMON USE AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____ 20____, by and between the E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado (the “Authority”) and, _____ (the “Licensee”).

RECITALS

WHEREAS, the Authority is the owner of fee property and multi-use easements related to the E-470 Public Highway; and

WHEREAS, the Authority’s fee ownership includes a nominal three hundred foot (300’) wide E-470 Public Highway roadway right-of-way (the “E-470 ROW”) and certain parcels of real property acquired in conjunction with the Authority’s acquisition of the E-470 ROW but not presently used for the Authority’s operations (the “Remnant Parcels”); and

WHEREAS, the Authority has also purchased an additional seventy-five foot (75’) wide corridor in either fee ownership or in multi-use easement for future utilities, landscaping, or multi-use trails and, for purposes of this Agreement, the term “Utility Corridor” shall mean that seventy-five foot (75’) wide corridor that abuts and is located immediately adjacent to and generally east and west of the E-470 ROW; and

WHEREAS, for purposes of this Agreement, the term “Authority Property” shall include the Utility Corridor, Remnant Parcels, and the E-470 ROW; and

WHEREAS, the Licensee is a _____ which intends to provide for various public facilities, appurtenances, improvements, and other services, including, without limitation, _____, and other public improvements within the proposed _____, in _____, Colorado; and

WHEREAS, the Licensee desires permission from the Authority to use a portion of Authority Property for the purposes of constructing and maintaining certain of these improvements (the “Improvements” as more particularly defined below) and the Authority has agreed to grant such permission subject to the terms and provisions set forth in this Agreement. That portion of Authority Property upon which the Improvements are to be located is described on **Exhibit A**, attached hereto and incorporated herein by this reference, and for the purposes of this Agreement shall be defined as the “Common Use Area”; and

WHEREAS, the presence in the Common Use Area of the Improvements and the use of those Improvements strictly in accordance with the terms and conditions set forth in this Agreement are not expected to adversely affect the stability, integrity, operational characteristics, or safety of the E-470 Public Highway; and

WHEREAS, the Authority's operation of the traveled portion of the E-470 ROW and other use of the Authority Property will not adversely affect the stability, integrity, operational characteristics, or safety of the Improvements within the Common Use Area; and

WHEREAS, the Authority and the Licensee acknowledge and agree it is in their mutual interest to identify their respective rights and obligations in and to the Common Use Area in order to avoid conflict and to agree to the terms for maintaining the Common Use Area and the Improvements within the Common Use Area.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

AGREEMENT

The Recitals set forth above are hereby incorporated into the covenants and agreements set forth below.

1. **CONSIDERATION.** In addition to the other consideration contained in this Agreement and simultaneously with the execution of this Agreement, the Licensee agrees to pay the Authority [REDACTED] Dollars (\$ [REDACTED]) per acre, or pro-rata portion thereof, for the area contained within the Common Use Area and a one-time administrative fee of Seven Hundred and Fifty Dollars (\$750.00) on or before such time that the Licensee submits to the Authority the E-470 Construction Permit application related to the Improvements.

2. **USE AND OCCUPANCY OF COMMON USE AREA BY LICENSEE.** The Licensee and its officers, agents, employees, designees, contractors, guests, invitees, successors, and assigns and all those acting by or on behalf of the Licensee are hereby granted a non-exclusive license to use and occupy the Common Use Area for the purposes of constructing and maintaining [REDACTED] (the "Improvements") as more particularly described and shown on **Exhibit B**, attached hereto and incorporated herein by this reference. All construction and maintenance activities undertaken by the Licensee shall be completed at the Licensee's sole cost and expense and the Licensee shall be responsible for obtaining any and all required approvals and permits associated with construction and maintenance of the Improvements from the Authority and all applicable local, state, and federal governments. Construction and maintenance of the Improvements shall be subject to and in compliance with the E-470 Public Highway Authority Permit Manual, as amended from time to time, which is hereby incorporated into this Agreement by this reference (the "E-470 Permit Manual") and the terms of the E-470 permits which the Licensee must obtain for construction and maintenance of the Improvements. The construction of the Improvements will be generally in accordance with Exhibit B. The Licensee's right to use the Common Use Area shall be subject to the following limitations:

A. **Access Restriction.** The Licensee shall not at any time access the Common Use Area and/or the Improvements from the E-470 ROW, except in those

instances when specific prior written approval has been given by the Authority, or during an emergency involving a significant and imminent threat to life or to the public health or safety. The Authority may specify reasonable conditions to the Licensee's access to the Common Use Area for the protection of the E-470 ROW and the public traveling thereon. In all cases involving the Licensee's access of the Common Use Area from the E-470 ROW, the Licensee shall give due consideration to the fact that the E-470 ROW is utilized by the traveling public. In the event of an emergency, in addition to calling 9-1-1, as necessary, the Licensee shall notify the appropriate police and emergency authorities and the E-470 Public Highway Authority Communications Center, (303) 537-3409 immediately and provide the Authority a written report on the emergency situation as soon as practical thereafter.

B. Public Safety. At all times while using or accessing the Common Use Area, the Licensee and its officers, agents, employees, designees, contractors, guests, invitees, successors, and assigns and all those acting by or on behalf of the Licensee shall take all actions necessary to protect the public health and safety and shall comply with the E-470 Permit Manual. Additionally, the Licensee shall maintain insurance complying with Section 3, below, at all times while this Agreement is in effect, and the Licensee agrees to indemnify the Authority as provided in Section 4, below.

C. Existing Authority and Third Party Facilities and Easements that may Interfere with Licensee's Use of the Common Use Area. The Licensee hereby agrees that any presently existing facilities and/or improvements within the Common Use Area do not interfere with the Licensee's ability to construct, maintain, or operate the Improvements. To the extent that such presently existing facilities and/or improvements within the Common Use Area are found by the Licensee to interfere with the Licensee's ability to construct, maintain, and/or operate the Improvements, the Licensee agrees to resolve such matters of interference by modifying the Improvements and/or obtaining the agreement of all necessary parties for relocation and/or reconstruction of such interfering facilities and/or improvements with the owner of such facilities, and at no cost to the Authority.

D. Future Third Party Facilities within the Common Use Area. The Licensee hereby acknowledges and agrees that the Authority may, from time to time, issue rights for use and occupancy to third parties within the Common Use Area and that the Authority shall not be held responsible for any damages to the Improvements resulting from the granting of such rights.

E. Restoration and Maintenance. The Licensee agrees that it is its sole responsibility to maintain and repair, as necessary, the Improvements in order to ensure the Improvements are and remain in good repair and aesthetically pleasing. Should the Authority, in its sole discretion, consider the Licensee's maintenance and/or lack of maintenance unacceptable, the Authority shall provide the Licensee a written notice that identifies the Authority's specific concerns. The Licensee shall have ten (10) days after receipt of such written notice to remedy the Authority's concerns. If the Authority's concerns are not remedied to the Authority's satisfaction within ten (10) days, the

Authority may take action to have the concerns remedied or remedy the concerns on its own accord and the Licensee shall be responsible to reimburse the Authority for costs incurred by the Authority in taking such action. Additionally, the Authority may thereafter elect to terminate this Agreement pursuant to the provisions of Section 10, by providing the necessary notice of default to the Licensee. The Licensee further agrees that, after it has exercised use of the Common Use Area for any construction, maintenance, operation, and/or repair of the Improvements in any manner that disturbs the Common Use Area, it will restore the Common Use Area to the condition in which it was prior to that disturbance of the Common Use Area, except as necessarily disturbed to accommodate the Improvement and as agreed to by the Authority.

3. INSURANCE COVERAGE. The Licensee shall obtain insurance covering the activities set forth in the Agreement as provided in this Section:

A. General Requirements. The Licensee shall acquire and maintain in full force and effect, during the entire term of the Agreement, inclusive of warranty periods, if any, and extensions of the Agreement term, if any, the minimum insurance coverages and limits set forth in Section 3(B) in order to protect the Authority including its directors, officers, employees, agents, and the Licensee from claims that arise out of or result from the operations under this Agreement by the Licensee or by a subcontractor of the Licensee or anyone acting on their behalf or for which they may be liable. Failure to maintain the insurance policies, or to provide evidence of renewal of the required policies, is a material breach of this Agreement. All insurance shall be primary insurance and non-contributory with respect to all other available insurance sources and shall be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted in writing by the Authority. The Authority and its respective directors, officers, employees, and agents shall be named as additional insureds as provided in Section 3(D). The Licensee shall request its insurer to amend or endorse its insurance policy to provide that the insurer will give the Authority sixty (60) days' written notice prior to the cancellation, non-renewal, or material modification of any policy of insurance obtained to comply with this Section. In addition, the Licensee shall immediately upon receipt provide the Authority a copy of any notice of cancellation, non-renewal, or material modification of any policy of insurance obtained to comply with this Section.

B. Minimum Insurance Coverages. This Section shall incorporate and include all of the following required coverage (if and as indicated):

1. *Workers' Compensation Insurance.* Workers' compensation insurance with coverage in accordance with applicable law, including employers' liability with minimum limits of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) Disease-Policy Limit, and One Million Dollars (\$1,000,000.00) Disease each employee.

Included: Yes ☒ No ☐

2. *Commercial General Liability Insurance.* Commercial general

liability insurance with coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence; Two Million Dollars (\$2,000,000.00) annual aggregate; and One Million Dollars (\$1,000,000.00) products and completed operations aggregate. Coverage shall be on an ISO Form GL-001 (4/2013 edition or equivalent), shall include all major divisions of coverage, and shall be on a comprehensive basis, including:

- a. Premises and operations;
- b. Personal injury liability;
- c. Contractual liability;
- d. Property damage; and
- e. Independent contractors' coverage.

Included: Yes ☒ No ☐

In addition the Licensee shall provide commercial liability insurance endorsements as follows:

- a. Endorsement CG 20 37 (4/2013 edition, or equivalent) - products and ongoing and completed operations; (construction, installation, repair – operational equipment/property only)

Included: Yes ☐ No ☐

- b. Explosion, collapse, and underground (construction only);

Included: Yes ☐ No ☐

- c. Contractors' limited pollution coverage (construction only);

Included: Yes ☐ No ☐

- d. Endorsement CG 25 03 (dated as of 5/2009) or equivalent; general aggregate applies on a per project basis (construction only).

Included: Yes ☐ No ☐

3. *Commercial Automobile Liability Insurance.* Commercial automobile liability insurance with coverage in the amount of One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage, each accident covering owned, leased, hired, and non-owned vehicles, including employee vehicles.

Included: Yes ☒ No ☐

- 4. *Contractor's Pollution (Environmental) Liability.* Contractor's

pollution (environmental) liability insurance with coverage written on an occurrence or claims-made policy form, with a minimum [] Million Dollars (\$ []) per occurrence limit of liability. Policy shall insure for bodily injury, property damage, defense, and environmental cleanup as a result of pollution conditions.

Included: Yes ☐ No ☐

5. *Excess Liability Coverage.* Excess liability insurance with coverage, beyond that of the general liability, automobile liability and employers' liability coverages required herein, in the amount of at least [] Million Dollars (\$ []) combined single limit bodily injury and property damage, per occurrence, and [] Million Dollars (\$ []) annual aggregate. Separate aggregates need to be structured as found in the underlying coverages.

Included: Yes ☒ No ☐

C. Waiver of Subrogation. All coverages specified herein shall waive any right of subrogation against the Authority and its directors, officers, employees, and agents.

D. Additional Insured Parties. The Authority and its directors, officers, employees, and agents shall be named as additional insureds by Endorsement ISO CG 20 10 (4/2013 edition or equivalent) on all policies (with the exception of workers' compensation insurance).

E. Certificates of Insurance. Prior to commencing any work on the Improvements, the Licensee shall provide the Authority with a certificate or certificates evidencing the coverages identified on the face of the certificate with the contract number for this Agreement, the name of the project, and copies of the additional insured endorsement and all other required endorsements. If the coverage required expires during the term of this Agreement, the Licensee shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.

F. Additional Provisions. Each liability policy including, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:

1. The Licensee's insurance coverage shall be primary insurance with respect to the Authority and its directors, officers, employees, and agents. Any insurance maintained by the Authority or its directors, officers, employees, and agents shall be in excess of the Licensee's insurance and shall not contribute to it.

2. The Licensee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.

3. No special exclusions that specifically name certain work activities, products, or services the Licensee is responsible for performing under the Agreement may be included as not being insured under the policy.

G. Compliance with Reporting Provisions. The Licensee shall comply with reporting provisions or other conditions of the policies required herein, and a failure to do so constitutes a breach of this Agreement. Any failure on the part of the Licensee to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Licensee to provide the required coverage to the Authority and its directors, officers, employees, and agents.

H. Claims-Made Policies. If any policy is a claims-made policy, the policy shall provide the Licensee the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. The Licensee agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. The Licensee's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under this Agreement. If the policy is a claims-made policy, the retroactive date of any such policy shall be no later than the date this Agreement is executed by the parties hereto. If the Licensee purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the parties hereto.

I. No Limitation on Other Obligations. The procuring of required policies of insurance shall not be construed to limit the Licensee's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. The insurance obligations set forth in this Section are minimum coverage and limit requirements only. To the extent the Licensee maintains coverage and/or limits greater than these minimum requirements; such greater insurance coverage shall be applicable to the work on the Improvements and to any applicable liabilities and obligations of the Licensee under this Agreement. By specifying minimum insurance requirements, the Authority does not assert or recommend such insurance as being adequate for the work on the Improvements performed under this Agreement. The Licensee shall be solely responsible for any deductible losses under the policy.

J. Additional Risks and Hazards. If the Authority requests in writing that insurance for risks other than those described herein or for other special hazards be included in property insurance policies, the Licensee shall obtain such insurance, if available, in a form and for a cost approved by the Authority, and the cost thereof shall be charged to the Authority.

K. Subcontractors. If the Licensee subcontracts any portion(s) of the work on the Improvements, the Licensee shall require that each subcontractor retained by the Licensee acquire and maintain insurance coverage as set forth in this Section. The Licensee shall require each subcontractor to provide to the Licensee insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this

Section. The Licensee shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. The Licensee shall, upon Authority request, submit them to the Authority for review or audit. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

L. No Authority Duty to Verify or Review. Nothing in the Agreement or this Section shall impose upon the Authority any duty or obligation to verify the existence or adequacy of the insurance coverages maintained by the Licensee and the Authority shall not be responsible for any representations or warranties made by or on behalf of the Licensee to any insurance company or insurance underwriter.

4. INDEMNIFICATION. The Licensee shall indemnify, defend, and hold harmless the Authority and each of the governmental entities that is now or may in the future become a party to the Authority's establishing contract, and each of its directors, employees, agents, and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by, or with respect to third parties ("Any Claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Licensee or any of its subcontractors, material suppliers, agents, representatives, or employees, or the agents, representatives, or employees of any subcontractors or material suppliers, in connection with this Agreement, including, without limitation, Any Claims which cause or allow to continue a condition or event which deprives the Authority or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes. Provided, however, the Licensee shall not be liable for any claim, loss, damage, injury, or liability arising solely out of the intentional or negligent acts or omissions of the Authority, its directors, employees, agents, and consultants.

The obligations of the indemnifications extended by the Licensee to the Authority under this Section shall survive termination or expiration of this Agreement.

The Licensee's defense, indemnification, and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Licensee to defend in litigation, indemnify, or insure the Authority against liability for damage arising out of the death or bodily injury to persons or damage to property caused solely by the negligence or fault of the Authority or any third party under the control or supervision of the Authority.

Insurance coverage requirements specified in this Agreement in no way lessen or limit the obligations of the Licensee under the terms of this Section. The Licensee shall obtain, at the Licensee's own expense, additional insurance, if any, required to satisfy the terms of this Section.

5. CONTRACTORS AND SUB-CONTRACTORS. The Licensee is solely and fully responsible to the Authority for its obligations under this Agreement. The Licensee shall include in its contracts with any of its contractors or sub-contractors performing work on the Improvements a provision stating that the contractor and/or sub-contractor "shall defend,

indemnify, protect, and hold the E-470 Public Highway Authority (the “Authority”) harmless from any and all liability, loss, cost, damage, claim, or expense which the Authority may sustain or incur by reason of entry onto the Authority’s property or any third parties’ property and/or by reason of work performed on the Authority’s property or any third parties’ property by contractor and/or its agents, representatives, subcontractors, or employees. The provisions of this Section shall survive termination of this agreement.” Furthermore, the Licensee shall include in its contracts with any of its contractors or sub-contractors performing work on the Improvements the insurance required in Section 3 and the Licensee shall require such contractors and/or sub-contractors to provide adequate bonds that name the Authority as an additional obligee.

6. USE AND OCCUPANCY OF COMMON USE AREA BY THE AUTHORITY. Notwithstanding any contrary provision, the Authority reserves all of its right and title to the Common Use Area and shall continue to have the full rights to use the Common Use Area for any purpose. The Authority has no obligation to provide notice of any third parties’ intent to construct facilities within any part of the Common Use Area. The Authority and the Licensee shall mutually occupy and use said Common Use Area in such a manner as not to unreasonably interfere with the rights of the other party.

7. OWNERSHIP OF COMMON USE AREA. The Authority makes no warranty of title in connection with the Common Use Area and makes no representations or warranties related to fee title and rights in any Utility Corridor within the Common Use Area.

8. PUBLIC STREETS, ROADS, AND RAILWAYS NOT INCLUDED IN COMMON USE AREA. The Licensee acknowledges the Improvements may cross existing public streets, public roads, public highways, or privately owned railways which may not be part of the Common Use Area and are not within the governance or jurisdiction of the Authority. The Licensee shall bear responsibility to acquire all rights necessary for any reconstruction, relocation, repair, and/or maintenance of the Improvements from appropriate counties, municipal entities, the Colorado Department of Transportation, railroads, and/or others.

9. FUTURE RELOCATION OF IMPROVEMENTS. The Authority may require the Licensee to relocate all or any part of the Improvements upon the Authority’s determination, in its sole and reasonable discretion, that any portion of the Improvements should be relocated, reconstructed, adjusted, or removed from the Common Use Area. In this event, the Authority shall, not less than one hundred and eighty (180) days prior to the date on which the completion of same shall be required, notify the Licensee in writing of such necessity. Such relocation, reconstruction, adjustment, or removal shall occur at the sole expense of the Licensee. In the event the relocation of any of the Improvements will require easements located on property belonging to a third party in which the Authority does not own sufficient property interest to accommodate the relocation, the Authority and the Licensee will cooperate in obtaining the necessary interests for the reconstructed, relocated, or adjusted Improvements. The reasonable cost of these additional easements shall be borne by the Licensee. The Licensee shall provide the Authority with plans for the Licensee’s proposed relocation, reconstruction, or adjustment and, upon approval thereof by the Authority, the Licensee, subject to the terms of any Authority approvals and permits, including construction permits, shall promptly proceed to effect such relocation, reconstruction, or adjustment. The parties agree to use their best efforts to meet the

Authority's schedule. If the relocation, reconstruction, adjustment, or removal is not completed by the date required by the Authority, the Authority, without incurring liability, may perform the relocation, reconstruction, adjustment, or removal, and be reimbursed for said efforts by the Licensee. In the event that any of the Improvements will necessarily be required to be located outside the Common Use Area, the parties shall amend this Agreement and its Exhibit A to reflect any new configuration of the Common Use Area.

10. TERMINATION. The Authority shall have the right to terminate this Agreement for cause or convenience, in the Authority's sole and absolute discretion, by providing the Licensee with written notice, whereupon this Agreement shall terminate thirty (30) days after such notice is given. In the event of termination, the Authority may determine to either (1) require ownership of all the Improvements to be immediately conveyed to the Authority at no cost or (2) require that the Licensee, at its cost, restore the area to its previous condition by removing the Improvements and restoring the Common Use Area to its previous condition. To the extent necessary, the Licensee agrees to execute any additional documents required to effect conveyance of the Improvements at the time of termination or thereafter at the Authority's request. In the event of termination, the Authority shall have no obligation to maintain the Improvements.

11. DEFAULT. In addition to the termination provisions above, the Authority shall have the right to terminate this Agreement for cause if the Licensee fails to perform in accordance with the terms, covenants, and conditions of this Agreement, including, but not limited to, the failure to maintain the Common Use Area. In the event that the Authority deems the Licensee to be in default, it shall provide written notice to the Licensee indicating the event of default. The Licensee shall have thirty (30) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within thirty (30) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed sixty (60) days except by mutual written consent of the parties. In the event that the Licensee has failed to cure in accordance with this Section, the Authority shall have the right to terminate this Agreement for cause. The Authority may terminate by providing the Licensee with written notice of termination, whereupon this Agreement shall terminate upon the date of the notice. In the case of termination for cause, the Authority may determine to either (1) require ownership of all the Improvements to be immediately conveyed to the Authority at no cost or (2) require that the Licensee, at its cost, restore the area to its previous condition by removing the Improvements and restoring the Common Use Area to its previous condition. To the extent necessary, the Licensee agrees to execute any additional documents required to effect conveyance of the Improvements at the time of termination or thereafter at the Authority's request. In the event of termination, the Authority shall have no obligation to maintain the Improvements.

12. MISCELLANEOUS.

A. Non-Assignability. The Licensee may not assign its rights or delegate its duties hereunder without the prior written consent of the Authority. The Authority may assign its rights or delegate its duties hereunder without the prior written consent of the Licensee.

B. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto, by the other party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal services, when received in the United States' mail, first-class postage prepaid addressed to:

The Authority:

E-470 Public Highway Authority
22470 East 6th Parkway
Aurora, CO 80018
Attn: Executive Director

The Licensee:

[REDACTED]
[REDACTED]
[REDACTED]
Attn: [REDACTED]

Either party may change its address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.

C. Controlling Law and Venue. The parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for [REDACTED] County, State of Colorado.

D. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

E. Governmental Immunity. Nothing in this Agreement or in any actions taken by the Authority pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes.

F. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the provisions of this Agreement that require continued performance, compliance, or effect after the termination hereof, shall survive such termination and shall be enforceable by the Authority if the Licensee fails to perform or comply as required.

G. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the parties hereto.

H. Entire Contract. This Agreement constitutes the entire agreement between the parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

I. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provisions.

J. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

K. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

L. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement signed by the parties.

M. Payment of Tolls. The Licensee understands and agrees that the Licensee, its subcontractors, vendors, and employees shall pay all tolls incurred by them during the term of this Agreement.

N. Recordation. The parties agree that this Agreement may be recorded in the records of the Clerk and Recorder for [REDACTED] County.

O. Runs with the Land. The rights and responsibilities set forth in this Agreement are intended to be covenants with respect to the real property so indicated and are to run with the land.

P. Survival of Representations. Each and every covenant, promise, and payment contained in this Agreement shall survive each and be binding and obligatory upon each of the parties and shall not merge into any deed, assignment, covenant, escrow agreement, easement, lease, or any other document.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

E-470 PUBLIC HIGHWAY AUTHORITY

By: Tim Stewart
Its: Executive Director

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Tim Stewart as Executive Director of the E-470 Public Highway Authority.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

APPROVED AS TO FORM:
ICENOGLE SEAVER POGUE
A Professional Corporation

General Counsel

Director of Finance

DATE APPROVED BY THE BOARD OF DIRECTORS: _____

By: _____
Its: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ and _____, as _____ and _____ of _____.

My commission expires: _____

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Exhibit A

COMMON USE AREA

Exhibit B
IMPROVEMENTS

APPENDIX C

E-470 PUBLIC HIGHWAY AUTHORITY PERMIT

**E-470 PUBLIC HIGHWAY AUTHORITY**

22470 East 6th Parkway, Suite 100
Aurora, CO 80018
(303) 537-3470

Permit Number: _____

Please print or type

TYPE OF PERMIT

- | | |
|---|---|
| <input type="checkbox"/> Construction Permit – Permit to Occupy | <input type="checkbox"/> Annual Access Permit – Pursuant to Agreement |
| <input type="checkbox"/> Construction Permit – Construction | <input type="checkbox"/> Annual Access Permit – Other |
| <input type="checkbox"/> Construction Permit – Activity Affecting Traffic | <input type="checkbox"/> Access Permit |

PERMITTEE: APPLICANT

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Contact: _____
Phone: _____ Mobile: _____
Email: _____

OTHER THAN PERMITTEE

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Contact: _____
Phone: _____ Mobile: _____
Email: _____

ACTIVITY DESCRIPTION (check all that apply)**Purpose**

- | | |
|---|--|
| <input type="checkbox"/> Installation of Temporary Facility | <input type="checkbox"/> Access for Survey |
| <input type="checkbox"/> Installation of Permanent Facility | <input type="checkbox"/> Access for Other: _____ |
| <input type="checkbox"/> Maintenance of Existing Facility | <input type="checkbox"/> Annual Access for Routine/Emergency Maintenance |
| <input type="checkbox"/> Removal of Facility | <input type="checkbox"/> Adjustment/Relocation |
| <input type="checkbox"/> Construction/Other: _____ | |

Facility (type, size, class of transmitting, design pressure or potential, etc): _____

Nature of Installation

- | | |
|--|--|
| <input type="checkbox"/> Longitudinal (parallel) | <input type="checkbox"/> Buried |
| <input type="checkbox"/> Transverse (crossing) | <input type="checkbox"/> Aerial/Ground-mounted |

LOCATION

Hwy. Station No.: _____ Location: _____
County: _____ City/Town: _____
Milepoint(s), intersection features: _____
Additional remarks: _____

FEES

Value of Permitted Work: \$ _____ Permit Fee: \$ _____ Administration Fee: \$ _____

E-470 USE ONLY

Contract No.: _____	Date Issued: _____	Dept. Director: _____
Utility No.: _____	Date Issued: _____	Permit Manager: _____



**E-470 PUBLIC HIGHWAY
AUTHORITY**

22470 East 6th Parkway, Suite 100
Aurora, CO 80018

(303) 537-3470

Permit Number: _____

Please print or type

PERMIT DOCUMENTS

The Permit Documents shall collectively include this Permit, signed by E-470 and Permittee, and all of the following documents, which are incorporated herein by this reference (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> Exhibit A Standard provisions for Permit Operator | <input type="checkbox"/> Exhibit F As-Built's |
| <input type="checkbox"/> Exhibit B Payment and Performance Bond | <input type="checkbox"/> Exhibits G Traffic Control Plan |
| <input type="checkbox"/> Exhibit C Certificate of Insurance | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Exhibit D Construction Plans | <input type="checkbox"/> Contract No. _____ |
| <input type="checkbox"/> Exhibit E Project Specifications | |

Permittee's request to use and/or occupy the E-470 right-of-way/multi-use easement (the "E-470 Property") as described above is granted subject to the terms and conditions of this Permit, including all of the Exhibits attached hereto. IT IS UNDERSTOOD that the Permittee shall accomplish all work at no expense to E-470 and shall own and maintain any and all facilities permitted.

Permittee acknowledges that nothing herein shall be interpreted to grant Permittee an easement or any other interest in real property comprising the E-470 Property.

Permittee hereby agrees to indemnify, defend, protect and save E-470, its directors, officers, agents, and employees harmless from and against any loss of and/or damage to E-470 Property, third parties and/or Permittee's facilities, and all loss and/or damage on account of injury to or death of any person whomsoever, arising at any time, caused by or growing out of the use and/or occupation of E-470 Property by Permittee's facilities or any plan thereof, including but not limited to installation, adjustment, relocation, maintenance, operation and/or removal of facilities, unless such loss and/or damage arises from the sole negligence or willful conduct of E-470 or its employees or agents.

Failure by the Permittee to comply with any of the included terms and conditions may subject this Permit to suspension or cancellation, at the sole discretion of E-470.

This Permit is not valid until fully endorsed by all parties, with the date of issue affixed by an authorized representative of E-470. This Permit expires on _____, 20____ after issuance, with an automatic renewal period of _____. A fully executed copy of this Permit must be on file at the E-470 Public Authority administrative office.

No work shall be permitted that infringes on the mainline lanes and no traffic control devices shall be placed within two (2) feet from the outermost solid white line during the hours of 6:00 A.M. to 9:00 A.M. and 3:00 P.M. to 6:00 P. M.

In accepting this Permit, the undersigned, representing the Permittee, represents that he or she has the authority to sign for and bind the Permittee and that he or she has read, understands, and accepts all the included conditions.

Signatures:

_____ Permittee/Applicant	_____ Print Name	_____ Title	_____ Date
_____ E-470 Public Highway Authority	_____ Title	_____ Date of Issue	

EXHIBIT A TO THE E-470 PERMIT

STANDARD PROVISIONS FOR PERMIT OPERATOR

Please read and initial in the lower right-hand corner of the following pages.

1. INTENT OF THE PERMIT DOCUMENTS.

The work authorized under this Permit shall comply with the requirements of Permit Documents and the E-470 Public Highway Authority Permit Manual, as amended from time to time, and applicable federal, state and industry codes and regulations. In the event of conflicting requirements, the following hierarchy shall be used:

- a. All applicable federal, state and industry codes and regulations.
- b. This Permit.
- c. Standard Provisions for Permit Operator.
- d. Plans.
- e. Project Specifications.
- f. E-470 Public Highway Authority Permit Manual (latest edition).
- g. CDOT Standard Specifications for Road and Bridge Constructions and all references (late set edition).

Construction of any portion of the E-470 Highway facility, including the pavement structure, subsurface support, drainage, landscaping elements and appurtenant features, shall also comply with the provisions of the E-470 Public Highway Authority's General Provisions, Specifications, CDOT Standard Specifications for Road and Bridge Construction and with the Colorado Standard Plans (M & S Standards).

2. PURPOSE.

The E-470 permit process is based on the E-470 Public Highway Authority Permit Manual policies and is required for, but not limited to the following:

- a. Installation of new facilities across the E-470 Highway;
- b. Maintenance of existing facilities installed by Permit or Common Use Agreement;
- c. Access upon E-470 Property;
- d. Construction of any facility upon E-470 Property;
- e. Routine maintenance of existing facilities installed by permit or Common Use Agreement, not involving any movement of dirt, fences, signs or other items;
- f. Annual Access upon the E-470 Property; and
- g. Other items as deemed necessary by E-470.

3. PROCESS.

The following process shall be used for the application and execution of this Permit.

Application Submittal – Upon submittal of the permit documentation, E-470 may conduct an in-house review. This review involves all groups within E-470 and usually takes ten (10) business days. All comments received during the review will be addressed. The applicant will resolve all comments identified by E-470, make appropriate revisions and re-submit the applicable portions.

Permit Fees – After all E-470 concerns have been addressed, E-470 will determine the Permit Fee and Administration Fee.

Pre-Construction Meeting – When applicable, a Pre-Construction meeting will be set by E-470 when all documents have been reviewed and approved.

Permit Issuance – Permit issuance may occur following the pre-construction meeting, if applicable, the receipt of insurance certificates, and if there are no other outstanding issues.

Permit Close Out – After the work has been accepted by E-470 Field Staff, the work authorized under the Permit will be regarded as “substantially complete”. The Permit will not be placed in warranty until E-470 has accepted the final As-Built Plans. Permittee will not be issued any further Permits until E-470 has accepted As-Built Plans for the current permit.

Pre-Approval – Permittee may request to be considered for a pre-approval status with E-470. This pre-approval status is reserved for those who will have to obtain multiple permits from E-470. Pre-approval shall apply to advance agreements regarding insurance, so duplicate submissions of these items will not be required with each permit application.

4. PERMIT APPLICATION AND EXHIBITS.

Permittee shall submit all required documents or the application will be deemed incomplete and will not be accepted.

Letter of Request (on letterhead or e-mail with signature block) as necessary to document that the owner concurs in the application, if the applicant is other than the Permittee and to provide full descriptions of nature of the proposed work, value of work, etc.

Permit Form (pages 1 and 2).

Exhibit A – Standard Provisions for Permit Operator.

Print, read, initial all pages in the lower right-hand corner and submit with all other exhibits.

Exhibit B – Payment and Performance Bond.

- a. Print document from the E-470 web site under Permits, Construction Permits, Printer friendly copy of Payment and Performance Bond or call **303-537-3751** for a copy.
- b. Prior to beginning work, Contractor may be required to submit a Payment and Performance Bond meeting the requirements contained in this Exhibit A in an amount of the value of the work permitted. Permittee E-470 shall provide the value of the work to be permitted. E-470 may adjust and/or approve such value as deemed appropriate by E-470.
- c. The Payment and Performance Bond shall not be released until six (6) months after the expiration of the two (2) year warranty period and any extensions thereof, which commences after Final Acceptance.

Exhibit C – Insurance Certificate.

Permittee or Permittee’s insurance company shall provide an Insurance Certificate. The Insurance Certificate shall contain the required provisions as contained in this Exhibit A.

Exhibit D – Plans.

Applicant shall provide plans that completely depict the Work to be performed. Plans for facility installations shall be depicted on E-470 As-Built in both Adobe Portable Document Format (PDF) and digital form compatible with Intergraph Microstation V8 or such other compatible format as required by E-470. E-470 will provide the necessary As-Built, which will show existing features. Plans at a minimum shall include:

- a. Distance from E-470 mile post and intersecting streets;

- b. Distance of proposed work or facility from E-470 Property line;
- c. Distance from edge of pavement;
- d. Distance of occupation within E-470 Fee, or if it crosses E-470 Fee;
- e. Facility type: (water, gas, phone, electric, fiber optic cable, oil, etc.);
- f. Nature of installation (buried, overhead or attached to a highway structure); and
- g. Detailed profile of any work, especially near the E-470 fiber optic line.

Exhibit E – Project Specifications.

Permittee shall provide project specifications as necessary and/or as required by E-470.

Exhibit F – As-Builts.

Permittee shall provide As-Builts as necessary after completion of construction or other modifications to E-470 Property. Permittee shall provide the design on E-470 as-builts. Please call **303.537.3751** to obtain as-builts.

Exhibit G – Traffic Control Plan.

Whenever the work will affect the movement or safety of traffic, Permittee shall provide a Traffic Control Plan which shall conform to the “Federal Manual of Uniform Traffic Control Devices for Streets and Highway” (Part VI). Traffic Control Plans must be prepared by a Traffic Control Supervisor and signed with certification reference.

Exhibit H – Completion Covenant.

Any Permittee that is self insured shall execute a Completion Covenant in lieu of providing an Insurance Certificate. A copy of the Completion Covenant can be printed from the E-470 web site under Permits, Printer friendly copy of Completion Covenant or by calling **303-537-3751** for a copy.

Other.

Permittee shall provide such other exhibits or documentation as required by E-470 such as the following:

- a. **WETLANDS, ARCHAEOLOGICAL, HAZARDOUS MATERIAL, ENVIRONMENTAL, HISTORICAL AND OTHER CLEARANCES:** Facility owner/contractor must satisfactorily address these items, in accordance with applicable law, as a condition to issuance of a Permit. The letter of request for a Permit may include a discussion of the status of any required environmental clearances. Upon request, E-470 will provide locations of these known items.

5. PERMIT FEE AND ADMINISTRATION FEE.

Prior to issuance of the Permit, Permittee shall pay the Permit fee, as determined during the Permit review. Do Not Submit fee with the application.

Sample Permit fee calculation: (1 ft X 15 ft / 43560 X \$75,000 per acre = \$25.83)

Fees for longitudinal facility and transverse installations shall be \$75,000 per acre unless waived by the Executive Director of E-470. Fees for other miscellaneous construction activities or improvements will be determined by the Executive Director on a case-by-case basis. E-470, in its sole discretion, may accept materials/services and/or other things of value to E-470 in lieu of cash payment from the Permittee in an amount determined by E-470.

E-470 may charge an Administration Fee in the amount of \$750 for E-470's review Permittee's submitted documents.

6. REQUIRED INSURANCE COVERAGE.

E-470 requires a Certificate of Insurance prior to authorizing commencement of any work on E-470 Property.

Permittee and its contractor(s) shall procure, at their own expense, and maintain for the duration of the work period, the following minimum insurance coverage:

- a. General Requirements. Permittee shall acquire and maintain in full force and effect, during the entire term of the Permit, including any extensions hereof, and at any time thereafter necessary to protect E-470, its directors, employees, agents, consultants and Permittee from claims that arise out of or result from the operations under the Permit by Permittee or by a subcontractor or a vendor or anyone acting on their behalf or for which they may be liable, the coverages set forth in Paragraph 6(b). All insurance is to be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted by E-470. Permittee's insurance shall provide that the insurer will give E-470 sixty (60) days written notice prior to the cancellation or material modification of any policy of insurance obtained to comply with this Paragraph 6.
- b. Minimum Insurance Coverages:
 1. Workers' compensation insurance in accordance with applicable law, including employers' liability with minimum limits of \$100,000 each accident, \$500,000 Disease-Policy Limit, \$100,000 Disease each employee.
 2. Commercial general liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each occurrence; \$2,000,000 general aggregate, and \$1,000,000 products and completed operations aggregate. Coverage shall be on an ISO 1996 Form (CG 0001 or equivalent), include all major divisions of coverage and be on a comprehensive basis, including:
 - a) Premises and operations;
 - b) Personal injury liability;
 - c) Contractual liability;
 - d) Property damage;
 - e) Products and completed operations;
 - f) Independent contractors coverage;
 - g) Explosion, collapse and underground (for contractors only);
 - h) Contractors' limited pollution coverage (for contractors only); and
 - i) Endorsement CG 2-503 or equivalent; general aggregate applies on a per project basis (for contractors only).
 3. Commercial automobile liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each accident covering owned, leased, hired, non-owned, and employee non-owned vehicles used at the Permit site.
 4. Professional Liability – coverage in the amount of \$1,000,000 each claim and in the aggregate covering the negligent acts or omissions of the Consultant and/or its subcontractors in the performance of the Services (for professionals only).
 5. Excess Liability Coverage – Liability coverage inclusive of general liability, automobile liability and employers liability in the amount of at least \$5,000,000 combined single limit bodily injury and property damage, each occurrence; and \$5,000,000 in the aggregate. Separate aggregates need to be structured as found in the underlying coverages.
 6. All coverages specified herein shall waive any right of subrogation against the Authority and its directors, officers and employees.

- c. Additional Insured Parties. All policies (with the exception of workers' compensation and professional liability insurance) shall insure the interest of the Authority and its respective directors, officials, employees, agents, and consultants.
- d. Certificates of Insurance. Prior to commencing any work under the Permit, the Permittee shall provide the Authority with a certificate or certificates evidencing the coverages identified on the face of the certificate with the Permit number for this Permit, the name of the project and a copy of the additional insured endorsement. If the Permittee subcontracts any portion(s) of the work, such subcontractor(s) shall be required to furnish certificates evidencing workers' compensation and employers' liability insurance coverage, commercial general liability insurance coverage and automobile liability insurance coverage, in amounts satisfactory to E-470 and the Permittee and containing the "additional insured", "waiver of subrogation" and "cancellation" conditions found in this Paragraph 6. If the coverage required expires during the term of the Permit, the Permittee and its subcontractor(s) shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.
- e. Additional Provisions. Each general liability policy and, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:
 - 1. Permittee's insurance coverage shall be primary insurance with respect to the Authority and its directors, officers and employees. Any insurance maintained by the Authority (or its directors, officers and employees) shall be in excess of the Permittee's insurance and shall not contribute to it.
 - 2. Permittee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.
- f. Failure to Comply with Reporting Provisions. Any failure on the part of the Permittee to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Permittee to provide the required coverage to the Authority (and its directors, officers and employees).
- g. Claims-Made Policies. If any policy is a claims-made policy, the policy shall provide the Permittee the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two years. Permittee agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. Permittee's failure to purchase such an extended reporting period as required by this Paragraph shall not relieve it of any liability under the Permit. If the policy is a claims-made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Permit is executed by the parties hereto. If the Permittee purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Permit is executed by the parties hereto.
- h. No Limitation on Other Obligations. The procuring of required policies of insurance shall not be construed to limit the Permittee's liability hereunder or to fulfill the indemnification provisions and requirements of this Permit. Permittee shall be solely responsible for any deductible losses under the policy.
- i. Additional Risks and Hazards. If the Authority requests in writing that insurance for risks other than those described herein or for other special hazards be included in property insurance policies, Permittee shall obtain such insurance, if available, in a form and for a cost approved by the Authority, and the cost thereof shall be charged to the Authority.

7. INDEMNIFICATION.

Permittee shall indemnify, defend and hold harmless E-470 and each of the governmental entities that is now or may in the future become a party to E-470's Establishing Contract, and each of its directors, employees,

agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee or any of its subcontractors or material suppliers, agents or employees, in connection with the Permit and/or the Permittee's work hereunder. Further, the Permittee hereby agrees to indemnify, defend and hold harmless E-470 and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities of, by or with respect to, third parties ("any claims"), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee, its employees, subcontractors, material suppliers or agents or employees, or the agents or employees of any subcontractors or material suppliers which causes or allows to continue a condition or event which deprives E-470 or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Nothing in the Permit or in any actions taken by E-470 pursuant to the Permit shall be deemed a waiver of E-470's sovereign immunity under the Colorado Governmental Immunity Act. Provided, however, that such Permittee shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of E-470, its directors, employees, agents and consultants. The obligations of the indemnifications extended by the Permittee to E-470 under the Permit shall survive termination or expiration of the Permit.

Permittee's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in the Permit shall be construed as requiring the Permittee to defend in litigation, indemnify or insure E-470 against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of E-470 or any third party under the control or supervision of E-470.

This indemnification shall be enforceable irrespective of whether E-470 shall have approved, either express or implied, the design, construction, installation, operation, maintenance or repair of such Facility Improvements within E-470 Property.

8. PAYMENT AND PERFORMANCE BOND.

Prior to issuance of this Permit, E-470 may require the Permittee to provide E-470 with a Payment and Performance Bond in a form acceptable to E-470. The Payment and Performance Bond shall be in a sum determined by E-470. The Payment and Performance Bond shall be increased to such amounts as directed by E-470. A sample Payment and Performance Bond can be obtained on the E-470 web site (www.e470.com) or by calling **303.537.3751**. E-470 will consider Bonds currently in effect between the Contractor and Permittee in satisfaction of this requirement, provided that E-470 is named as dual obligee and accepts the terms of the Bonds. The Payment and Performance Bond shall not be released until six (6) months after the expiration of the two (2) year warranty period and any extensions thereof, which commences after Final Acceptance.

9. LIQUIDATED DAMAGES.

Cutting of the Fiber Optic Line – In the event that the Permittee or the Permittee's Contractor, in the performance of the work, damages the fiber optic line currently existing at the worksite, the Permittee understands and agrees that as a result of such event, E-470 will suffer substantial losses and damages, which the Parties are unable to ascertain at the time of contracting. Such losses and damages may include the loss of telecommunications services to E-470's Toll Beltway Management System and to other points of connection, as well as loss of revenues incidental to the operation of the E-470 Highway, reduced public confidence and adverse public relations which would reduce future tolls. The Permittee agrees to pay E-470, as liquidated damages for damage to the operations of the fiber optics line, except when such damage

is the sole result of another E-470 Contractor's failure to accurately locate the line, the amount of \$50,000 per day/per occurrence, which amount the Parties agree is a reasonable estimate of E-470's losses.

10. COMMENCEMENT AND COMPLETION.

No work on E-470 Property shall commence prior to issuance of a fully executed and approved permit.

Permittee shall notify E-470 inspector:

- a. Twenty-four (24) hours before commencing work on E-470 Property;
- b. Twenty-four (24) hours prior to any work adjacent to or crossing the Toll Beltway Maintenance System (TBMS) line;
- c. When suspending operations for five (5) or more working days;
- d. Twenty-four (24) hours before resuming suspended work; and/or
- e. Upon completion of work.

No work shall proceed beyond the date specified in the permit without written approval of E-470.

Prior to beginning any construction work, a pre-construction meeting with all involved parties shall be conducted by E-470.

The Permit, plan exhibit, insurance certificate(s) and traffic control plan, must be available on site during work.

11. PLANS, PLAN REVISIONS, ALTERED WORK.

Plans or a work sketch are subject to E-470 approval. A copy of the approved plans or sketch must be available on site during work.

If necessary, minor changes, corrections and/or additions to this Permit may be ordered by the E-470 inspector, any other E-470 representative or a local authority to meet unanticipated site conditions.

Plan revisions, or altered work differing in scope or nature from that authorized under this Permit, are subject to E-470 approval. Permittee shall promptly notify the E-470 inspector of changed conditions which may occur on the job.

12. ACCESS.

Permittee shall obtain E-470 approval for Permittee's point of access onto and routes over E-470 Property utilized in connection with the performance of work pursuant to this Permit.

13. WORK WHERE E-470 SHARES JURISDICTION.

Utility work within municipal boundaries, or on certain public lands, may require the Permittee to obtain the separate approval of the appropriate jurisdictional agency or property owner.

14. UTILITY LOCATION

Permittee may not perform any work that will affect existing utilities. Work necessitating protection of existing permitted utilities may require a separate permit.

It shall be the responsibility of the Permittee to verify the location of the existing facilities and notify all facility owners or operators of any work that might involve other facilities within the E-470 Property. Permittee shall identify the location of underground facilities or any other installation with suitable markers, of a type and at

locations as specified or otherwise approved, by E-470. Markers shall be maintained by Permittee for the life of the installation and shall provide unobstructed line of sight between marker signs. E-470 may require warning ribbon and/or detection wire for buried facilities. Permittee shall furnish "As Constructed" lines and grades as directed by E-470.

Any work necessary to protect existing permitted facilities, such as an encasement, will be the responsibility of the Permittee. Any damage or disruption to any facilities during the construction shall be the Permittee's sole responsibility and shall be promptly repaired or replaced at no cost to E-470.

Owners of underground facilities shall locate their facilities pursuant to Section 9-1.5-105, C.R.S.

15. TRAFFIC CONTROL.

Whenever the work will affect the movement or safety of traffic, Permittee shall develop and implement, at its sole expense, a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around and through the work site and the safety of the Permittee's work force. The use of appropriate advance warning and construction traffic control signs, flashers, barricades and flagging may be required at all times during construction. These devices shall be located within the E-470 Property. When flagging personnel are required, they shall be certified by the contractor in accordance with E-470 standards.

The traffic control plan and the application of traffic control devices shall conform with the Manual on Uniform Traffic Control Devices (MUTCD), and Colorado Supplement thereto, and with E-470's requirements. All work that requires traffic control shall be supervised by a registered professional traffic engineer or by a traffic control supervisor certified by the American Traffic Safety Services Association (ATSSA) or the Colorado Contractors Association (CCA). Permittee shall provide certification of the Traffic Control Supervisor as Worksite Traffic Supervisor, as such terms are defined in the MUTCD, by the American Traffic Safety Services Association or other recognized authority.

Permittee's traffic control plan shall be subject to E-470's approval prior to commencing work on the E-470 Property. A copy of the approved traffic control plan must be available on site during work.

Any damage to any E-470 Highway facilities including traffic control devices shall be repaired immediately by Permittee at no cost E-470 and prior to continuing other work. Any mud or other material tracked or otherwise deposited on the E-470 Highway shall be removed daily by Permittee, or as ordered by the E-470 inspector.

No work shall be permitted that infringes on the mainline lanes and no traffic control devices shall be placed within two (2) feet from the outermost solid white line during the hours of 6:00A.M. – 9:00A.M. and 3:00P.M. – 6:00P.M., except as determined by E-470 in its sole discretion and if the Facility Owner assures an acceptable flow of traffic as well as providing the required safety precautions and proper traffic control.

16. EROSION CONTROL PLAN.

Whenever a utility installation, adjustment or maintenance activity will result in grading and trenching, the utility shall develop and implement an erosion control plan using temporary Best Management Practices (BMPs).

The erosion control plan must be approved by E-470 prior to commencement of the work. The designer of the plan shall have been certified in the development of erosion control from the Rocky Mountain Education Center at the Red Rocks Community College or an approved equal. The plan shall be prepared and presented to E-470 for approval. To prevent delays in the beginning of the work, the erosion control plan should be presented to E-470 prior to the pre-construction conference.

The Permittee shall comply with the following BMPs at all times, unless otherwise approved by E-470:

- a. Check Dams;
- b. Erosion Bales;
- c. Drop Inlet Erosion Bales;
- d. Culvert Inlet Protection;
- e. Soil Retention Blanket;
- f. Silt Fence; and
- g. Channel Erosion Logs or Bales.

No work will be performed until E-470 has approved the installation of the temporary BMPs in the field.

The temporary BMPs shall be checked after each storm and cleaned or replaced to provide adequate protection against erosion. The temporary BMPs shall be inspected by the Permittee every fourteen (14) calendar days if storm events have not occurred.

After the completion of the work, the temporary BMPs shall remain until the vegetation has been established or until E-470 provides the approval to have it removed. E-470 shall have the final approval on the removal of the temporary BMPs.

If the Permittee fails to install or maintain the temporary BMPs in accordance with this Permit, E-470 shall provide written notice of the failure to the Permittee. If the Permittee fails to complete installation or maintenance of the temporary BMP within three (3) days of the notice, E-470 shall shut down the project by suspending or stopping work and/or revoking this Permit.

If E-470 is fined by the Colorado Department of Public Health and Environment or the Environmental Protection Agency because of the actions of the Permittee under this Permit, the Permittee will be responsible for paying the fines. If E-470 incurs any additional damages as a result, in whole or in part, of the Permittee's and/or its contractors' failure to comply with BMPs, E-470 shall be entitled to recover the amount of damages from the Permittee and/or the Permittee's contractor.

17. CLEAR ROADSIDE CONSIDERATIONS.

E-470 is committed to providing a roadside area thirty (30) feet from the edge stripe of the nearest lane that is as free as practical from nonreversible hazards and fixed objects (the "Clear Zone"). New above ground installations may be permitted within the Clear Zone only upon a showing that no reasonable alternate locations exist. Permittee must utilize appropriate countermeasures to minimize hazards.

Materials and equipment shall not be located or stored within the Clear Zone of the E-470 Highway. The traffic control plan must include protective measures where materials and equipment may be stored on E-470 Property and outside the Clear Zone.

Open trenches and other excavations within E-470 Property shall be addressed in the Permittee's traffic control plan.

Permittee agrees to promptly undertake mitigating or corrective actions acceptable to E-470 upon notification by E-470 that the installation permitted herein has resulted in an otherwise unforeseen hazardous situation for E-470 Highway users.

Parking within or upon the E-470 Highway of vehicle loading/unloading or other business related activities is strictly prohibited.

No construction vehicles shall be parked, or construction materials/equipment stored, on the E-470 Property overnight.

No private vehicles shall be parked on the E-470 Property at any time during the construction.

No equipment will be allowed on the main lanes of the E-470 Highway at any time during construction.

18. CONTRACTOR STATEMENT.

Permittee shall include the following statement in each contract with a contractor who will perform some or all of the work contemplated by this Permit: "All work performed under this contract shall comply with all terms and conditions of _____ (Permit Title) Permit No. _____ granted to _____ (Permittee) by the E-470 Public Highway Authority on _____ (date)."

19. GENERAL CONSTRUCTION REQUIREMENTS.

Permittee shall not cross the E-470 Highway median.

No work shall be permitted that infringes on the mainline lanes and no traffic control devices shall not be placed within two (2) feet from the outermost solid white line during the hours of 6:00A.M. – 9:00A.M. and 3:00P.M. – 6:00P.M. No work shall be permitted at night or on Saturdays, Sundays or holidays without prior authorization or unless otherwise specified in this Permit. E-470 may restrict or stop work on E-470 Property during adverse weather conditions, during periods of high traffic volume or for any other cause deemed sufficient by E-470.

Those areas within the E-470 Property which must be disturbed by permit operations shall be kept to a minimum.

Permittee shall not discharge, spill, dump or dispose of any material, other than stormwater, into a storm sewer system. In the event that Permittee becomes aware of any non-stormwater discharge into the storm sewer system, Permittee shall immediately notify E-470's command center by telephone, to be followed by formal written notification to E-470 within seventy-two hours thereafter.

E-470 will enlist the assistance of the Colorado State Patrol in enforcing the State Littering Statute against any person who deposits, throws or leaves any material, other than stormwater, into a storm sewer system within the boundaries of E-470 Property in violation of the policy contained in E-470 Resolution 04-04. As a secondary enforcement measure, E-470 shall work with local law enforcement agents from the City of Aurora, Town of Parker, Douglas County and Arapahoe County to ensure enforcement of the prohibition on discharging non-stormwater within the boundaries of E-470 Property.

If E-470 incurs any additional damages as a result, in whole or in part, of the Permittee's and/or its contractors' discharge, spill, dump or disposal of any material other than stormwater into a storm sewer, E-470 shall be entitled to recover the amount of damages from the Permittee and/or the Permittee's contractor.

In addition, the Permittee shall conduct any remediation required by the local, state or federal government, and E-470, at Permittee's sole expense. If Permittee fails to perform the required remediation, such remediation may be performed by E-470. The Permittee shall immediately reimburse E-470 for all costs and expenses that it incurs in connection with such remediation. If the Permittee fails to reimburse E-470 for the costs and expenses, E-470 may make a claim against the Permittee's Payment and Performance Bond, as appropriate.

Permittee shall not spray, cut or trim trees or other landscaping elements within E-470 Property, unless such work is otherwise specified in this Permit, or clearly indicated on the approved plans.

No cleated or tracked equipment may work on or move over paved surfaces without mats. Any and all facilities, which are the subject of this Permit, shall be of durable materials in conformity with accepted practice or industry standards, designed for long service life and relatively free from routine servicing or maintenance.

Thrust blocks will be required on all vertical and horizontal bends.

Permittee is responsible for designing structure attachments, subject to the approval of E-470.

Work in wetland areas shall be avoided where possible. Existing vegetation in the area (wetlands and non-wetlands) shall be protected. Removal of trees and shrubs is prohibited.

Construction compaction by means of jetting, puddling or water flooding is prohibited within all E-470 Property.

Any monument marking the boundaries of E-470 Property, the Fee or the MUE that is destroyed, disturbed, moved or otherwise damaged in any way shall be restored or replaced with a new E-470 monument by the E-470 Surveyor, at the Facility Owner's sole expense. The Facility Owner shall restore E-470 Property if it is damaged or disturbed during the monument restoration process. Such restoration shall include restoring vegetation and providing irrigation as needed. If Facility Owner fails to reimburse E-470 for the costs and expenses, E-470 may make a claim against the Facility Owner's Payment and Performance Bond, as appropriate.

Right-of-way fence damaged or removed due to construction is to be re-established to its original position one (1) foot inside the right-of-way boundary upon restoration of any destroyed, disturbed, or moved survey markers or monument(s).

Restoration of E-470 Property disturbed by a Facility Owner shall include reseeding or resodding to restore pre-construction conditions. This work shall consist of seeding or sodding all areas which are denuded of vegetation during Facility construction operations. The work will be accomplished under the direction of E-470. The seed species, origin and application rates will be as determined by E-470.

If petroleum or other potentially hazardous material is encountered during excavation, the work shall be stopped immediately and E-470 notified. The proper disposal of any soil or other material determined to be hazardous and/or contaminated, either uncovered or excavated during construction, shall be the responsibility of the Permittee. The disposal shall be accomplished in accordance with all applicable federal, state and local laws and regulations and at no cost to E-470.

All excavations for utility lines, culverts, trenches or tunnels shall meet the requirements of the Occupational, Safety and Health Administration (OSHA), Colorado Industrial Commission, Colorado Division of Mines or the Colorado Department of Transportation, whichever applies.

20. MISCELLANEOUS.

E-470 makes no warranty of title to or possession of E-470 Property which is subject to this Permit.

The privileges conveyed in this Permit are subject to all prior agreements, licenses, permits and conveyances recorded and unrecorded.

It is the Permittee's responsibility to determine the existence of any rights, users, installation, facilities and facilities in or near the permitted E-470 Property and to accommodate them in connection with the Permittee's work and to coordinate with such agencies including shared use of any encasements.

Any additional permits and clearances required by federal or local government agencies, ditch companies and other state agencies are the responsibility of the Permittee and the property owner.

Permittee may not assign this Permit or the privileges hereunder.

Permittee shall comply with all relevant laws, regulations, codes and other rules and requirements of all governments, including but not limited to those referenced in the E-470 Public Highway Authority Permit Manual as it may be amended from time to time.

E-470 may enforce the terms and conditions of this Permit by any and all remedies available to it, including without limitation suing for injunctive relief and/or damages. E-470 shall be awarded its attorney's fees and all other costs of enforcement.

Where Permittee does not fulfill the obligation to repair or maintain any portion of E-470 Property or the obligation to control and maintain the flow of traffic, E-470, in lieu of canceling this permit, may accomplish the required work by any other appropriate means, and the Permittee will be liable to E-470 for any associated costs.

21. ALIGNMENT, COVER, CLEARANCE.

Location and alignment of Permittee's facilities shall only be as specified in this Permit or as otherwise indicated in the approved plans or work sketch.

Minimum overhead clearance shall be as required by the E-470 Public Highway Authority Permit Manual criteria.

22. PAVEMENT CUTS AND REPAIRS.

No paved surface shall be cut unless otherwise specified in this Permit. Asphalt removals shall be saw cut to assure a straight edge for patching.

23. BORING, JACKING, ENCASEMENT.

Unless otherwise specified, buried crossings shall be bored or jacked beneath the roadway, at least from toe of slope to toe of opposite slope.

Encasement requirements shall be consistent with the E-470 Public Highway Authority Permit Manual. E-470 may require protective casing for shallow installations or certain conduit materials. Encased crossings shall extend at least from toe of slope to toe of slope, or the full width between access-control lines on E-470 Highway.

24. TOLL BELT MANAGEMENT SYSTEM (TBMS) PROCEDURES FOR EXCAVATION

Prior to any excavation, Permittee will arrange for all the facilities, including the TBMS to be located and marked. The TBMS backbone conduits must be located vertical and horizontal. The conduits must be physically observed and their location recorded prior to work progressing. E-470 shall be notified twenty-four (24) hours prior to location of the conduit to witness the procedure.

Permittee shall excavate to within three (3) feet of vertical or located depth of TBMS backbone. Hand digging is preferred; however, excavation with a backhoe and an observer has been employed in the past. Permittee shall then excavate the remaining three (3) feet by hand. Warning tape should be encountered eighteen (18) to twenty-four (24) inches above the conduit. The fiber optic line was installed along with a copper line in the one and one-quarter (1-1/4) inch HDPE conduit. Three (3) additional one (1) inch HDPE conduits accompany this conduit. No new utility will be placed within four (4) feet vertically of the TBMS backbone.

In the event that the utility passes under the TBMS backbone, the conduits shall be supported in the following manner:

- a. Bind the four conduits together at four (4) foot intervals, minimum two locations within excavation, using Mule tape or similar material.
- b. Support the backbone at three (3) foot intervals, minimum two (2) locations along excavation.
- c. Support will be accomplished by suspending the backbone with Mule tape or similar strapping material to four (4) inch by four (4) inch treated timber posts, two (2) inch steel pipe or number eleven (11) rebars, placed perpendicular across the trench at ground level. Larger diameters may be required for trench depths in excess of four (4) feet.

In the event that the proposed utility crosses above the TBMS backbone, item 1-3 will be followed. Once located, the backbone shall be backfilled a minimum of eighteen (18) inches and temporarily protected by positioning two (2) - four (4) by eight (8) by one-quarter (1/4) inch sheets of steel over the conduits until the new utility is installed and the trench backfilled.

25. RESTORATION OF FEE OR MUE.

Prior to final acceptance, all disturbed portions of E-470 Property shall be cleaned up and restored to their original condition, except as the surface may be permanently modified by the use of this Permit, at the Permittee's sole expense and subject to E-470 approval. Seeding, sodding and planting shall be as specified, or otherwise approved by E-470. Construction, maintenance and watering requirements shall conform with E-470 requirements and CDOT Standard Specifications. Where landscape restoration must be delayed due to seasonal requirements, such work shall be authorized by separate permit.

26. SUSPENSION AND CANCELLATION.

The E-470 inspector or its representative may suspend or stop work, or revoke this Permit for any cause including but not limited to the following:

- a. Non-compliance with the provisions of this Permit.
- b. Adverse weather or traffic conditions.
- c. Concurrent E-470 Highway construction or maintenance in conflict with permit work.
- d. Any condition deemed unsafe for workers or for the general public.

Work may resume upon disposal of grounds for suspension.

This permit is subject to termination due to:

- a. Non-compliance with the provisions of this Permit;
- b. Abandonment or transfer of ownership;
- c. Superseded by new permit covering the same installation;
- d. Conflict with planned E-470 Highway construction; and/or
- e. Any other reason at the sole discretion of E-470.

Permittee must promptly terminate occupancy upon notice of cancellation of this Permit.

27. INSPECTION AND ACCEPTANCE.

E-470 will determine the extent of inspection services necessary for a given installation. Permittee shall attend final inspection as may be required. Permittee shall be responsible for any costs of said inspection services.

Inspector(s) employed by or under contract with E-470 are authorized to inspect all work done and materials furnished within E-470 Property. This inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to act as foreman for the Permittee.

All materials and each part or detail of the work may be subject to E-470 inspection. The inspector shall be allowed access to all parts of the work and shall be furnished with information and assistance by the Permittee as required to make a complete and detailed inspection.

Any work completed without inspection by the inspector may be ordered uncovered, removed, and restored at the Permittee's expense.

All inspections conducted by E-470 are for the convenience and benefit of E-470. An E-470 inspector must be on site during installation, and all cost for the inspection and transportation (including travel time) shall be reimbursed by the Permittee at the following rates:

Labor costs per hour \$ _____
 Vehicle costs per hour \$ _____

Unacceptable work is work that does not conform to the requirements of this Permit. Unacceptable work, resulting from any cause, shall be promptly removed and replaced in an acceptable manner at the Permittee's expense. The fact that the inspector may have overlooked the unacceptable work during previous inspections shall not be the basis of a waiver for the requirements to remove and replace unacceptable work. Final acceptance does not relieve Permittee of maintenance obligations toward those elements of the facility constructed under this Permit.

E-470 will be notified a minimum of twenty-four (24) hours prior to work requiring testing. The minimum testing frequency shall follow the requirements of the controlling municipality or unincorporated county that the parcel resides within or CDOT Standards, whichever is more stringent. E-470 retains the right to direct additional testing, up to ten (10) percent of the minimum testing frequency, and to conduct its own tests. The Permittee will bear the cost and responsibility for all testing within E-470 Property. All Permittee tests and associated data conducted within E-470 Property shall be submitted to E-470 within forty-eight (48) hours of completion. The contractor shall supply to E-470 its testing program, prior to the start of work. The testing program shall include, but not be limited to, type, frequency and specifications of all items of work requiring testing by the contractor within E-470 Property.

Upon completion of the work, the Permittee/Contractor/Engineer shall contact E-470 for final inspection at **303.537.3751** and submit an "As-built" plan, in an acceptable format showing in detail all construction changes, modifications and revisions. All changes, modifications or revisions shall be stamped by a Colorado registered professional engineer. Permittee shall also provide a record of the work, including materials used, copies of all testing reports and proximity to or work performed on E-470 Highway features. As-builts must be submitted with thirty (30) calendar days of the Acceptance date. Failure to submit As-builts within the thirty (30) calendar days will result in E-470 having the As-builts completed via the Payment and Performance Bond.

Upon completion of the work, a letter certifying that all project materials, construction, inspection and workmanship was in accordance with the plans and applicable E-470 standards and specifications shall be submitted to E-470. The certification letter must be signed and stamped by a Colorado registered professional engineer.

A final walk through of all construction activities located within E-470 Property will be conducted at the conclusion of the project or at such time the Permittee deems that work is completed. The Permittee, within thirty (30) calendar days, shall repair, replace or restore any defective item of work noted at this walk through.

After Permittee has complied with all paragraphs of this Permit to the satisfaction of E-470, E-470 will issue an Acceptance of the work. The warranty period shall not begin until final acceptance has been granted.

28. OPERATIONS AND MAINTENANCE.

Upon its completion, Permittee shall own and maintain the installation permitted herein. The facility shall be kept in an adequate state of repair and maintained on such a manner as to cause the least interference with the normal operation and maintenance of the E-470 Highway.

Maintenance activities, new excavation, or any other disturbance within E-470 Property that are not included in this Permit shall require a separate permit. Where E-470 Highway construction or maintenance operations so require, Permittee will shut off lines, remove all combustible materials from E-470 Property or provide other temporary safeguards.

Permittee shall provide a minimum of two (2) days notice to E-470 whenever maintenance work will affect the movement or safety of traffic upon the E-470 Highway. In an emergency, Permittee shall immediately notify E-470 on call person and the State Highway Patrol of any possible hazards.

Should any permitted facilities be abandoned, Permittee agrees to promptly notify E-470 and to remove any or all portions of such facilities, as may be directed by E-470.

29. WARRANTY.

Permittee warrants that the work constructed or replaced as condition of this Permit or any reconstruction work shall be free from defects in workmanship and materials for a period of two (2) years from the final Acceptance date.

If any element of the work constructed or replaced as a condition of this Permit, or any restoration work, fails within two (2) years due to improper construction or materials. Permittee will be responsible to make all repairs as soon as practical but not less than thirty (30) calendar days once notified in writing by E-470. If Permittee fails to perform warranty work with thirty (30) calendar days, or other period as agreed by Permittee and E-470, E-470 may perform the warranty work. The Permittee shall immediately reimburse E-470 of all costs and expenses it incurs in connection with such work. If Permittee fails to reimburse E-470 for these costs and expenses, E-470 may make a claim against the Payment and Performance Bond, as appropriate.

30. ADJUSTMENTS DUE TO E-470 HIGHWAY CONSTRUCTION.

In the event any changes are made to the E-470 Highway in the future that would necessitate removal, adjustment or relocation of this installation, Permittee will do so promptly, at no cost to E-470, within thirty (30) calendar days of receipt of written notice from E-470.

31. COMPLETION COVENANT.

In the event that the Permittee is self insured and therefore unable to provide an Insurance Certificate, E-470 shall require the Permittee to execute a Completion Covenant in lieu of an Insurance Certificate. The Completion Covenant provides that Permittee shall (1) faithfully and within such time as required by this Permit, including mutually agreed upon extensions of time, perform all routine or periodic maintenance or emergency repairs as described in and allowed by this Permit (2) indemnify, defend and hold harmless E-470 and each of the governmental entities that is now or may in the future become a party to E-470's Establishing Contract, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee or any of its subcontractors or material suppliers, agents or employees, in connection with the Permit and/or the Permittee's work hereunder, further, the Permittee hereby agrees to indemnify, defend and hold harmless E-470 and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities of, by or with respect to, third parties ("any claims"), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee, its employees, subcontractors, material suppliers or agents or employees, or the agents or employees of any subcontractors or material suppliers which causes or allows to continue a condition or event which deprives E-470 or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes, nothing in the Permit or in any actions taken by E-470 pursuant to the Permit shall be deemed a waiver of E-470's sovereign immunity under the Colorado Governmental Immunity Act, and provided, however, that such Permittee shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of E-470, its directors, employees, agents and consultants, the obligations of the indemnifications extended by the Permittee to E-470 under the Permit shall survive termination or expiration of the Permit, however, Permittee's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in the Permit shall be construed as requiring the Permittee to defend in litigation, indemnify or insure E-470 against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of E-470 or any third party under the control or supervision of E-470; and (3) fully reimburse and repay E-470 all expenses which E-470 may incur in completing the routine or periodic maintenance or emergency repairs or in returning E-470 Property to the condition in which it existed before any routine or periodic maintenance or emergency repairs were begun to the extent that such completion activities were not performed in accordance with this Permit. The Completion Covenant shall terminate upon the termination of this Permit. A sample Completion Covenant can be obtained on the E-470 web site (www.e470.com) or by calling 303.537.3747.

32. MONITORING WELLS.

This Permit allows the installation of monitoring well(s) and monitoring for a _____ year period after the installation. The Permit may be re-issued by E-470 for further monitoring, upon the request and direction of the Colorado Department of Public Health and Environment. All test well results shall be sent to the E-470 inspector.

33. ROUTINE MAINTENANCE AND EMERGENCY REPAIRS.

Routine and periodic maintenance and emergency repairs may be performed within E-470 Property, under the general terms and conditions of this Permit. Any significant repairs such as culvert replacement, resurfacing or changes in design or specifications will require authorization from E-470. E-470 shall be given proper advance notice whenever maintenance work will affect the movement or safety of traffic on E-470 Highway. In an emergency, E-470 and the State Patrol shall immediately be notified of possible hazards.

EXHIBIT B TO THE E-470 PERMIT

PAYMENT AND PERFORMANCE BOND

THE STATE OF _____)
) ss.
COUNTY OF _____)

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, _____, (hereinafter called "Principal"), and _____, a corporation duly organized under the laws of the State of _____ and licensed to do business in the State of Colorado, as Surety (hereinafter called "Surety"), are held and firmly bound unto E-470 Public Highway Authority, a political subdivision of the State of Colorado, as Owner and Obligee (hereinafter called "Owner" or "Obligee"), in the penal sum of _____ (\$_____) in lawful money of the United States, for the payment of which sum well and truly to be made to the Obligee, the Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Owner have executed E-470 Permit No. _____, _____ (*permit name*) (hereinafter, the "Permit"), which is by reference made a part hereof;

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall 1) promptly, fully, faithfully and timely perform all covenants, obligations and provisions of said Permit on Principal's part and satisfy all claims and demands incurred for the same during the original term thereof and, any extensions thereof that may be granted by the Owner with or without notice to the Surety; 2) fully indemnify and save harmless the Owner from all costs and damages which said Owner may suffer by reason of failure so to do; 3) fully reimburse and repay said Owner all outlay and expenses which said Owner may incur in making good any default; 4) duly and promptly pay all persons, firms and corporations, including any and all contractors, all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment furnished, and for all materials and equipment used or rented in the performance of the Permit, 5) satisfy all claims and demands, including but not limited to liquidated damages incurred under the Permit; and 6) keep the work constructed under this Permit in good repair, in accordance with the warranties (as defined in the Permit), for a period of two (2) years from date the Owner grants Final Acceptance for the work. The obligations of this Payment and Performance Bond shall not be released until six (6) months after the expiration of the two (2) year warranty period and any extensions thereof, otherwise the obligations shall remain in full force and effect.

In accord with the foregoing, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Permit or to the work (as defined in the Permit) to be performed thereunder or to the specifications accompanying same shall in any way affect its obligation on this Bond; and the Surety does hereby waive any notice of any change, extension of time, alteration or addition to the terms of the Permit or to the work to be performed thereunder or the specifications accompanying same whether or not it increases the amount due under the Permit.

The Surety, for value received, hereby agrees that whenever Principal shall be and is declared by Owner to be in default under the Permit, the Surety shall, at the option of the Authority, and in no more than fifteen (15) days, 1) promptly remedy the default; or 2) shall promptly, subject to Owner's concurrence, perform and complete the obligations under the Permit in accordance with its terms and conditions, which may include obtaining a Bid or Bids for completing the work covered by the permit and the execution of a new permit between the Owner and a new contractor approved by Owner. The Surety shall pay the costs of completion of

the work covered by the Permit up to an amount equal to the amount of this Bond, as increased or decreased by changes to the Permit which increase or decrease the value of the work.

If the Principal fails to pay for any labor performed, for any materials and equipment furnished, and for any materials and equipment used or rented in the performance of the Permit, the Surety will pay the same in an amount not exceeding the cost of the Permit work together with interest at eight (8) percent per annum.

Any suit under this Bond must be instituted, or notice of intent to commence such suit received by Surety, before one (1) year after the date of expiration of the warranty period or any extension thereof covered by the Permit.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein or the successors and assigns of Owner and to all persons, firms and corporations for all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment furnished, and for all materials and equipment used or rented in the performance of the Permit.

It is expressly understood and agreed that any alterations which may be made in the terms of said Permit or in the work to be done under said Permit, or any extension(s) of time for the performance of the Permit, or any forbearance on the part of either the Owner or the Principal to each other, shall not in any way release the Principal and the Surety, or either of them, their successors or assigns from their liability hereunder, notice to the Surety of any such alteration, extension or forbearance being hereby expressly waived by the Surety.

[Remainder of page intentionally left blank.]

Signed and sealed this day of _____, 200_.

PRINCIPAL:

ATTEST:

_____ By _____
Title _____

SURETY:

ATTEST:

_____ By _____

Attorney-in-Fact with Power of Attorney attached hereto and
incorporated herein

IMPORTANT: Surety companies executing this Bond must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Colorado.

EXHIBIT H TO THE E-470 PERMIT

COMPLETION COVENANT

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, _____ (the "Permittee"), is held firmly bound unto the E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado ("E-470"), in the sum of _____ (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made to E-470, Permittee binds itself, its successors and assigns, firmly by these presents in accord with the terms of this Completion Covenant.

WHEREAS, the above-named E-470 has issued or intends to issue an Annual Access Permit or Construction Permit/Permit to Occupy (the "Permit") allowing Permittee access to the E-470 right-of-way ("ROW") and multi-use easement(s) ("MUE") (together referred to as "E-470 Property") for the purpose of routine or periodic maintenance or emergency repairs of Permittee facilities as defined in said Permit, which Permit is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Permittee shall 1) faithfully and within such time as required by the Permit, including mutually agreed upon extensions of time, perform all routine or periodic maintenance or emergency repairs as described in and allowed by said Permit 2) indemnify, defend and hold harmless E-470 and each of the governmental entities that is now or may in the future become a party to E-470's Establishing Contract, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee or any of its subcontractors or material suppliers, agents or employees, in connection with the Permit and/or the Permittee's work hereunder, further, the Permittee hereby agrees to indemnify, defend and hold harmless E-470 and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities of, by or with respect to, third parties ("any claims"), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee, its employees, subcontractors, material suppliers or agents or employees, or the agents or employees of any subcontractors or material suppliers which causes or allows to continue a condition or event which deprives E-470 or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes, nothing in the Permit or in any actions taken by E-470 pursuant to the Permit shall be deemed a waiver of E-470's sovereign immunity under the Colorado Governmental Immunity Act, and provided, however, that such Permittee shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of E-470, its directors, employees, agents and consultants, the obligations of the indemnifications extended by the Permittee to E-470 under the Permit shall survive termination or expiration of the Permit, however, Permittee's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in the Permit shall be construed as requiring the Permittee to defend in litigation, indemnify or insure E-470 against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of E-470 or any third party under the control or supervision of E-470 in accordance with the Indemnification Agreement attached hereto and incorporated herein by this reference as Attachment 1; and 3) fully reimburse and repay E-470 all expenses which E-470 may incur in completing the routine or periodic maintenance or emergency repairs or in returning E-470 Property to the condition in which it existed before any routine or periodic maintenance or emergency repairs were begun to the extent that such completion activities were not performed in accordance with the Permit, then this obligation shall be null and void. Otherwise it shall remain in full force and effect. This Completion Covenant shall terminate upon the termination of the Permit.

No waiver of this Completion Covenant may occur except upon the receipt of a written waiver executed by E-470. No right of action shall accrue under this Completion Covenant to or for the use of any person or corporation other than E-470 named herein or the successors and assigns of E-470.

E-470 and Permittee further agree that all claims arising between E-470 and Permittee which relate in any way to the routine or periodic maintenance or emergency repairs or E-470 Property and this Completion Covenant shall be brought in the District Court of the State of Colorado and that venue for all such actions shall lie only in the county or counties in which the routine or periodic maintenance or emergency repairs occur. E-470 and Permittee expressly and irrevocably waive any objections or rights which may affect venue of any such action including, but not limited to, forum non-conveniens or otherwise.

It is expressly understood and agreed that any alterations which may be made in the terms of the right to access E-470 Property for the routine or periodic maintenance, emergency repairs or any extension(s) of time for such access, or any forbearance on the part of either E-470 or Permittee, its successors assigns from its liability hereunder.

Signed and sealed this ____ day of _____, 200__.

PERMITTEE:

ATTEST:

By: _____
Title: _____
Date: _____

By: _____
Title: _____

ATTACHMENT 1 TO THE COMPLETION COVENANT

INDEMNIFICATION AGREEMENT

WHEREAS, _____ (the "Permittee") desires access to the E-470 right-of-way ("ROW") and Multi-use easement(s) ("MUE")(together referred to as "E-470 Property") for the purposes of routine or periodic maintenance or emergency repairs; and

WHEREAS, Permittee wishes for the E-470 Public Highway Authority ("E-470") to waive its normal requirement relating to insurance coverage for entities accessing E-470 Property; and

WHEREAS, E-470 desires to issue an Annual Access Permit or Construction Permit/Permit to Occupy (the "Permit") to Permittee (the "Permittee") for routine or periodic maintenance or emergency repairs upon E-470 Property.

NOW THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties do hereto agree as follows:

Permittee shall indemnify, defend and hold harmless E-470 and each of the governmental entities that is now or may in the future become a party to E-470's Establishing Contract, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee or any of its subcontractors or material suppliers, agents or employees, in connection with the Permit and/or the Permittee's work hereunder. Further, the Permittee hereby agrees to indemnify, defend and hold harmless E-470 and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities of, by or with respect to, third parties ("any claims"), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Permittee, its employees, subcontractors, material suppliers or agents or employees, or the agents or employees of any subcontractors or material suppliers which causes or allows to continue a condition or event which deprives E-470 or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Nothing in the Permit or in any actions taken by E-470 pursuant to the Permit shall be deemed a waiver of E-470's sovereign immunity under the Colorado Governmental Immunity Act. Provided, however, that such Permittee shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of E-470, its directors, employees, agents and consultants. The obligations of the indemnifications extended by the Permittee to E-470 under the Permit shall survive termination or expiration of the Permit.

Permittee's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in the Permit shall be construed as requiring the Permittee to defend in litigation, indemnify or insure E-470 against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of E-470 or any third party under the control or supervision of E-470.

Such indemnification of E-470 shall include, but is not limited to the following:

- A. Claims relating to worker's compensation insurance in accordance with applicable law, including employers' liability; and
- B. Claims commonly insured by commercial general liability insurance as such coverage relates to, without limitation, the following:
 - a. Premises and operation;
 - b. Personal injury liability;
 - c. Contractual liability;
 - d. Property damages;
 - e. Products and completed operations;
 - f. Independent contractor's coverage;
 - g. Explosion, collapse and underground;
 - h. Contractor's limited pollution coverage;
 - i. Endorsement CG 2-503 or equivalent; general aggregate applies on a per project basis.
- C. Claims commonly insured by commercial automobile liability insurance; and
- D. Claims commonly insured by professional liability; and
- E. Claims commonly insured by excess liability coverage insurance, including, without limitation
 - a. liability coverage inclusive of general liability;
 - b. automobile liability; and
 - c. employer's liability.

Signed and sealed this ____ day of _____, 200__.

PERMITTEE:

By: _____
Title: _____
Date: _____

ATTEST:

By: _____
Title: _____

APPENDIX D

E-470 PUBLIC HIGHWAY AUTHORITY STANDARD UTILITY RELOCATION AGREEMENT

**E-470 PUBLIC HIGHWAY AUTHORITY
STANDARD UTILITY RELOCATION AGREEMENT**

E-470 Utility Number	_____
Assessor's Parcel I.D. Number	_____
Company Utility Number	_____
Landowner	_____
Utility	_____
Negotiator	_____

**E-470 PUBLIC HIGHWAY AUTHORITY
STANDARD UTILITY RELOCATION AGREEMENT**

THIS AGREEMENT, made this ____ day of ____, 20__, by and between the E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado, whose address is 22470 East 6th Parkway, Suite 100, Aurora, CO 80018 ("E-470") and _____, whose address is _____ (the "Company").

RECITALS

WHEREAS, E-470 has acquired or is acquiring right-of-way (the "Right-of Way") for the construction of a new public highway, as that term is defined in C. R. S. § 43-4503(12)(1987 Supp.) (the "Highway"); and

WHEREAS, the Highway will necessitate the installation of certain new facilities, or the relocation or adjustment of certain existing facilities of the Company, which work is shown in more detail in the plans shown in the Company's Engineering Design, Exhibit B which is incorporated herein and made a part hereof by this reference;

WHEREAS, the Company agrees to complete all work involving the installation of new facilities, or the relocation or adjustment of existing facilities in a manner satisfactory to E-470 and in compliance with the E-470 Utility Policy and E-470 Permit Manual incorporated herein and made a part hereof by this reference;

WHEREAS, the Company has the right of occupancy in its existing location by reason of holding the fee, an easement, or other real property interest;

WHEREAS, E-470 desires to implement the relocation, adjustment or installation of the Company's facilities by entering into this Agreement with the Company;

WHEREAS, the construction and relocation of the Company's facilities within E-470's Right-of-Way as provided herein are designed not to adversely affect the design, construction, stability, integrity, operational characteristics, traffic safety, traffic operation or visual quality of the Highway; and

WHEREAS, the construction and relocation of the Company's facilities within E-470's Right-of-Way as provided herein are designed not to interfere with any existing or planned uses of E-470's Right-of-Way.

NOW, THEREFORE, it is hereby agreed that:

1. E-470 will reimburse the Company for the costs incurred in relocating, adjusting or installing Company's facilities as set forth in the Cost Estimate, Exhibit A, attached hereto and made a part hereof by this reference together with such increases payable under paragraph 11 herein.

2. The Company has determined that the method to be used in developing the relocation, adjustment or installation costs shall be as specified and described hereafter:

(a) Actual direct and related indirect costs accumulated in accordance with the E-470 Permit Manual estimated at \$_____.

OR

(b) An agreed lump sum of \$_____ as supported by the analysis of estimated cost in Exhibit A.

3. All claims for reimbursement of rights-of-way or easement cost by the Company shall be invoiced separately from other cost items.

4. If costs are developed under procedure 2(a), E-470 will upon satisfactory completion of the relocation, adjustment or installation as determined by inspection of the work and upon receipt of final billing, make payment in the amount of ninety (90) percent of the eligible costs as shown in the final billing. Prior to making the final payment, E-470 shall audit the billing to determine if it is within the cost estimate of Exhibit A, subject to the provisions of paragraph 11 below, and shall make final payment of the billed costs consistent with Exhibit A. When requested, E-470 will make intermediate payments at not less than monthly intervals to the Company when properly billed. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

5. If costs are developed under procedure 2(b), as specified, E-470 will, upon satisfactory completion of the relocations, adjustments or installations as determined by inspection of the work and upon receipt of a billing prepared in an acceptable form, make payment to the Company in the agreed amount.

6. Upon execution of this Agreement by both Parties hereto, and all required approvals, E-470 will, by written notice, authorize the Company to proceed with the necessary relocation, adjustment or installation, and the Company agrees to prosecute such work diligently to completion in such manner as will not result in avoidable interference or delay in either E-470's highway construction or in the said work. The Company agrees to complete the relocation work within _____ days after notice to proceed is received. The Company shall not be responsible for failure to complete the relocation work within days after notice to proceed if occasioned by strikes, war, riot, revolutions, fires, floods, droughts, accidents, insurrections, lockouts, acts of God, perils of the sea, stoppage of labor, or by refusal of any necessary license or government restrictions

considered as "force majeure," or by any other unavoidable cause other than the Company's own negligence. If the relocation work is not completed within _____ days after notice to proceed is received, E-470, without incurring liability, may perform the relocation work. Except as provided in paragraph 8, this contract will terminate on the date the final payment is made to the Company.

7. All records pertaining to said relocation, adjustment or installation will be retained for a period of not less than three years after final payment, and E-470 shall be entitled to inspect such records upon request.

8. The Company will carry out said relocation, installation or adjustment and accurately record the costs relative thereto in accordance with the E-470 Permit Manual, and the costs paid by E-470 pursuant to this Agreement shall be full compensation to the Company for all eligible costs incurred by the Company in making such relocations and adjustments.

9. Bills for work hereunder shall be submitted to E-470 not later than one-hundred twenty (120) days after completion of the work by the Company.

10. Where credit is not given for salvage, betterments, and expired service life, additional documentation supporting such determination may be required. E-470 shall have the right to inspect recovered materials prior to disposal by sale or scrap.

11. Any increase in the Cost Estimate (Exhibit A) that will result in the increase of the monetary estimate as stated herein by more than three-thousand dollars (\$3,000.00) or fifteen (15) percent of the estimate, whichever is greater, shall require a supplemental agreement or written Contract Modification Order. Any increased costs will be documented on final billing.

12. The Company hereby expressly agrees to indemnify, defend and hold harmless E-470 and each of the governmental entities that is now or may in the future become a party to E-470's Establishing Contract, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Company or any of its subcontractors or material suppliers, agents or employees, in connection with the Agreement and/or the Company's work hereunder. Further, the Company hereby agrees to indemnify, defend and hold harmless E-470 and each of its directors and employees from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities of, by or with respect to, third parties ("any claims"), arising directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Company, its employees, subcontractors, material suppliers or agents or employees, or the agents or employees of any subcontractors or material suppliers which causes or allows to continue a condition or event which deprives E-470 or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., Colorado Revised Statutes. Nothing in the Agreement or in any actions taken by E-470 pursuant to the Agreement shall be deemed a waiver of E-470's sovereign immunity under the Colorado Governmental Immunity Act. Provided, however, that such Company shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of E-470, its directors, employees, agents and consultants. The obligations of the indemnifications extended by the Company to E-470 under the Agreement shall survive termination or expiration of the Agreement.

Company's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in the Agreement shall be construed as requiring the Company to defend in litigation, indemnify or insure E-470 against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of E-470 or any third party under the control or supervision of E-470.

13. The Company shall procure, at its own expense, and maintain for the duration of the Agreement, the following minimum insurance provisions:

A. General Requirements. Company shall acquire and maintain in full force and effect, during the entire term of the Agreement, including any extensions hereof, and at any time thereafter necessary to protect E-470, its directors, employees, agents, consultants and Company from claims that arise out of or result from the operations under the Agreement by Company or by a subcontractor or a vendor or anyone acting on their behalf or for which they may be liable, the coverages set forth in Paragraph 13(A). All insurance is to be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted by E-470. Company's insurance shall provide that the insurer will give E-470 sixty (60) days written notice prior to the cancellation or material modification of any policy of insurance obtained to comply with this Paragraph 6.

B. Minimum Insurance Coverages:

1) Workers' compensation insurance in accordance with applicable law, including employers' liability with minimum limits of \$100,000 each accident, \$500,000 Disease-Policy Limit, \$100,000 Disease each employee.

2) Commercial general liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each occurrence; \$2,000,000 general aggregate, and \$1,000,000 products and completed operations aggregate. Coverage shall be on an ISO 1996 Form (CG 0001 or equivalent), include all major divisions of coverage and be on a comprehensive basis, including:

- a) Premises and operations;
- b) Personal injury liability;
- c) Contractual liability;
- d) Property damage;
- e) Products and completed operations;
- f) Independent contractors coverage;
- g) Explosion, collapse and underground (for contractors only);
- h) Contractors' limited pollution (for contractors only); and
- i) Endorsement CG 2-503 or equivalent; general aggregate applies on a per project basis (for contractors only).

3) Commercial automobile liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each accident covering owned, leased, hired, non-owned, and employee non-owned vehicles used at the Agreement site.

4) Professional Liability – coverage in the amount of \$1,000,000 each claim and in the aggregate covering the negligent acts or omissions of the Consultant and/or its subcontractors in the performance of the Services (for professionals only).

5) Excess Liability Coverage – Liability coverage inclusive of general liability, automobile liability and employers liability in the amount of at least \$5,000,000 combined single limit bodily injury and property damage, each occurrence: and \$5,000,000 in the aggregate. Separate aggregates need to be structured as found in the underlying coverages.

6) All coverages specified herein shall waive any right of subrogation against the Authority and its directors, officers and employees.

C. Additional Insured Parties. All policies (with the exception of workers' compensation and professional liability insurance) shall insure the interest of the Authority and its respective directors, officials, employees, agents, and consultants.

D. Certificates of Insurance. Prior to commencing any work under the Agreement, the Company shall provide the Authority with a certificate or certificates evidencing the coverages identified on the face of the certificate with the Agreement number for this Agreement, the name of the project and a copy of the additional insured endorsement. If the Company subcontracts any portion(s) of the work, such subcontractor(s) shall be required to furnish certificates evidencing workers' compensation and employers' liability insurance coverage, commercial general liability insurance coverage and automobile liability insurance coverage, in amounts satisfactory to E-470 and the Company and containing the "additional insured", "waiver of subrogation" and "cancellation" conditions found in this Exhibit D. If the coverage required expires during the term of the Agreement, the Company and its subcontractor(s) shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.

E. Additional Provisions. Each general liability policy and, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:

1) Company's insurance coverage shall be primary insurance with respect to the Authority and its directors, officers and employees. Any insurance maintained by the Authority (or its directors, officers and employees) shall be in excess of the Company's insurance and shall not contribute to it.

2) Company's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.

F. Failure to Comply with Reporting Provisions. Any failure on the part of the Company to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Company to provide the required coverage to the Authority (and its directors, officers and employees).

G. Claims-Made Policies. If any policy is a claims-made policy, the policy shall provide the Company the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two years. Company agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. Company's failure to purchase

such an extended reporting period as required by this paragraph shall not relieve it of any liability under the Agreement. If the policy is a claims-made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Company purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the parties hereto.

H. No Limitation on Other Obligations. The procuring of required policies of insurance shall not be construed to limit the Company's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. Company shall be solely responsible for any deductible losses under the policy.

I. Additional Risks and Hazards. If the Authority requests in writing that insurance for risks other than those described herein or for other special hazards be included in property insurance policies, Company shall obtain such insurance, if available, in a form and for a cost approved by the Authority, and the cost thereof shall be charged to the Authority.

14. Following the relocation, adjustment, or installation work and not less than five (5) days prior to backfilling the Facility and while a survey of the relocated, adjusted or installed Facility is possible, the Company shall notify E-470 and allow E-470 to perform a survey. Immediately upon completion of the relocation, adjustment or installation, the Company shall notify E-470 in writing of any variations from the Engineering Design (Exhibit B) existing in the completed relocation, modification, or installation.

15. The Parties agree to enter into the Common Use Agreement as provided in the E-470 Public Highway Authority Permit Manual and incorporated herein by reference as soon as the relocation work is completed. The area of common use will be defined based on the as-built location of the Facility or based on an easement granted to the Company, as appropriate.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

E-470 PUBLIC HIGHWAY AUTHORITY

By: Edward J. DeLozier
Its: Executive Director

ATTEST:

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 200__ by Edward J. DeLozier and _____, as Executive Director and _____ of the E-470 Public Highway Authority.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

APPROVED AS TO FORM:
ICENOGLÉ ♦ NORTON
SMITH ♦ GILIDA ♦ POGUE
A Professional Corporation

General Counsel

Director of Finance

DATE OF BOARD APPROVAL: _____

COMPANY

By: _____
Its: _____

ATTEST:

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____ and _____, as _____ and _____ of _____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

APPENDIX E

CONTRACTOR ADJUSTED UTILITY AGREEMENT

CONTRACTOR ADJUSTED UTILITY AGREEMENT

E-470 Utility Number	_____
Assessor's Parcel I.D. Number	_____
Company Utility Number	_____
Landowner	_____
Utility	_____
Negotiator	_____

This Agreement made on the _____ day of _____, 200_, between the E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado ("E-470") and _____ (the "Owner").

This is to advise that the Owner is not adequately staffed or not equipped to perform the relocation, adjustment or installation of its facilities at this time on this project. E-470 and the Owner hereby agree that it is in the interest of both parties to have E-470's Contractor accomplish this work during construction, expansion, modification, operation or maintenance of the highway. The proposed highway improvement will necessitate the relocation, adjustment or installation of certain facilities described as follows:

Which work is shown in more detail in the Engineering Design attached and incorporated herein as Exhibit A. The utility adjustments being proposed are to be accomplished by E-470's Contractor in conformance with the E-470 Utility Policy, the E-470 Permit Manual, incorporated herein and made a part hereof by this reference, and the construction plans and specifications.

All work performed on the facilities shall be subject to inspection by the Owner's personnel prior to acceptance of the work.

This adjustment shall be a cost of _____.

Estimated cost is \$ _____.

The Parties agree to enter into a Common Use Agreement as provided in the E-470 Public Highway Authority Permit Manual and incorporated herein by reference as soon as the relocation work is completed. The area of common use will be defined based on the as-built location of the facility or based on an easement granted to the Owner, as appropriate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

E-470 PUBLIC HIGHWAY AUTHORITY

By: Edward J. DeLozier
Its: Executive Director

ATTEST:

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by Edward J. DeLozier and _____, as Executive Director and _____ of the E-470 Public Highway Authority.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

APPROVED AS TO FORM:
ICENOGLE ♦ NORTON
SMITH ♦ GILIDA ♦ POGUE
A Professional Corporation

General Counsel

Director of Finance

DATE OF BOARD APPROVAL: _____

OWNER

By: _____

Its: _____

ATTEST:

STATE OF _____)

COUNTY OF _____)

ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____ and _____, as _____ and _____ of _____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public