



Colorado Springs Utilities

*It's how we're all connected*

## GENERAL PROVISIONS FOR PURCHASE ORDERS

1. **Definitions** - The following terms shall have the meanings set forth below:
  - “**Laws and Regulations**” - All applicable state, federal and local laws, rules, regulations, ordinances, codes, permits, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
  - “**Goods**” - Supplies, materials or any item purchased or available for purchase other than real property or services.
  - “**Contract**” - These General Provisions and any Purchase Order and/or attachments.
  - “**Contractor**” - The supplier that is providing the Goods and/or Services.
  - “**Party**”/“**Parties**” - Utilities or Contractor are each individually a Party, or collectively the Parties.
  - “**Project Manager**” - An employee that has been assigned by Utilities’ management that is responsible for the success of the project.
  - “**Procurement and Contract Services Representative**” - An employee that is a contracting agent or a member of the leadership team within the Procurement and Contract Services section of Utilities.
  - “**Services**” - Work performed to meet a demand, especially work not connected with a manufacturing process. The furnishing of labor, time, or effort by Contractor, not involving the delivery of any specific end product, other than reports that are incidental to the required performance.
  - “**Utilities**” - Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 121 South Tejon Street, Colorado Springs, Colorado 80903.
2. **Scope of Work** - Contractor shall provide Goods and/or perform Services as defined in the Purchase Order and/or attachments.
3. **Acceptance of Contract** - Contractor’s acknowledgement of this Contract, or the delivery of Goods and/or Services, or invoicing for payment, whichever occurs first, shall constitute Contractor’s unqualified acceptance of the Contract, whether or not Contractor otherwise signs the Contract, unless Contractor objects to such terms in writing within ten (10) days of placement of order by Utilities. This writing does not constitute a firm offer within the meaning of C.R.S. § 4-2-205, and may be revoked at any time prior to acceptance.
4. **Delivery and Time is of the Essence** - Time is of the essence. If the Goods and/or Services are not delivered by the designated time, as established in the Contract, Utilities reserves the right without liability, in addition to its other rights and remedies, to terminate this Contract under Section 19, “Termination for Cause” and to purchase substitute Goods and/or Services elsewhere and charge Contractor with any loss incurred.
5. **Goods Shipment and Risk of Loss** - For Goods, a complete packing list shall be enclosed with all shipments describing the contents of each package or container showing the weight of the Goods, the quantity and the Contract number. Contractor shall mark containers or packages with necessary lifting, loading, and shipping information, dates of shipment, and names and addresses of consignor and consignee. Delivery shall be F.O.B. Utilities’ designated facility. Contractor is responsible for insuring Goods while in transit and otherwise in their care, custody, and control. Title, and the risk of loss while in transit, will pass to Utilities upon Utilities’ receipt, and acceptance at the Utilities’ designated facility. Contractor shall not substitute Goods or ship more than the quantity of Goods ordered without express written permission from Utilities. If, in order to comply with Utilities’ required delivery date, it becomes necessary for Contractor to ship by a more expensive way than specified in this Contract, any increased transportation costs resulting from such expedited shipping shall be paid for by Contractor unless the necessity for such rerouting or expedited handling has been caused by Utilities and the increased costs are pre-approved by Utilities in writing. Services will be handled in accordance with specifications outlined in this Purchase Order.
6. **Stop Work Order** - Contractor shall stop the provision of Goods and Services for up to ninety (90) days in accordance with the terms of any written notice received from Utilities, or for such longer period of time as the Parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the Goods and Services covered by this Contract during the stoppage. Within such period, Utilities shall notify Contractor in writing to either terminate or continue the Goods and Services. In the event of a continuation, an equitable adjustment, in accordance with Section 19, “Changes”, may be made to the price, delivery schedule, or other provision affected by the stoppage, if applicable, provided that the claim for equitable adjustment is made in writing within thirty (30) days after such continuation.
7. **Inspection/Testing** - Payment for any Goods and Services supplied hereunder shall not constitute acceptance. Utilities shall have the right to inspect Goods and Services and to reject any or all Goods and Services which are defective or nonconforming based on Utilities’ judgment. Goods rejected by Utilities and Goods supplied in excess of quantities called for by this Contract may be returned to Contractor at Contractor’s expense and, in addition to Utilities’ other rights, Utilities may charge Contractor all expenses of unpacking, examining, repacking and reshipping the Goods. In the event Utilities receives Goods and Services with defects or nonconformities not apparent upon examination, Utilities reserves the right to require replacement, as well as payment of any damages. Nothing contained in this Contract shall relieve, in any way, Contractor’s obligation of testing, inspection and quality control. Use of a portion of the Goods for testing shall not constitute acceptance of the Goods. Nonconforming Goods will be returned to Contractor freight collect and risk of loss will pass to Contractor upon Utilities’ delivery to the common carrier. Final acceptance will be provided to Contractor in writing by Utilities’ Project Manager or designated representative.
8. **Invoicing/Payment** -
  - 8.1. Payment of undisputed invoices at the prices stipulated herein is due and payable Net Thirty (30) Days from Utilities’ receipt of a complete and accurate invoice for Goods accepted by Utilities. Each invoice shall be accompanied by supporting documentation as required by Utilities. Payment by credit card, “P-card,” or electronic funds transfer is a means of remitting payment only and shall not be construed as limiting Utilities’ rights or altering any of the terms or conditions incorporated into this Contract. Utilities prefers the Contractor email original invoices to [accountspayablemail@csu.org](mailto:accountspayablemail@csu.org) as the primary method of submittal. The next preferred method is fax (719-668-8600) and last is mailing to the following address:
    - Accounts Payable - MC 929
    - Colorado Springs Utilities, PO Box 1103
    - Colorado Springs, Colorado 80947-0929
  - 8.2. Invoices shall be prepared by Contractor in a manner acceptable to Utilities. Invoices shall be in a protected format that cannot be altered. Unless otherwise stated in this Contract, a copy of each invoice, duly marked “COPY”, shall be sent directly to the project manager or contract administrator as identified in this Contract and as otherwise advised in writing.
9. **Late Payment** - Utilities is committed to paying invoices within the terms of the Contract. Utilities will not pay any late charges or service charges that may be incurred due to late payment.

**10. Taxes** - Utilities is an enterprise of the city of Colorado Springs and is exempt from taxes. Utilities' tax exempt numbers are as follows:

FEDERAL: 84-6000574  
FEDERAL EXCISE: 138557  
STATE SALES TAX: 98-03479

**11. Confidentiality –**

- 11.1. Contractor acknowledges that Utilities is a public entity subject to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201, et seq. Any confidential and/or proprietary information that either Party discloses to the other with respect to this Contract shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure, and shall herein be referenced as "Confidential Information".
- 11.2. In the course and scope of the Goods and Services being provided under this Contract, Contractor may be provided, including by way of presence on Utilities' premises or by use of, or access to, Utilities' computer system, access to information that is Utilities' customer information, including but not limited to names, addresses, telephone numbers, or personal financial information of past or present users. This information is deemed Confidential Information, whether or not it is marked or not. In addition to the above Contractor acknowledges that Utilities is subject to the provisions of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), 15 U.S.C. § 1681, et seq., and when applicable shall comply with Fact Act rules. Contractor agrees that it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees or Utilities-authorized subcontractors having a "need to know" to the extent and for the time necessary for performance of this Contract.
- 11.3. Furthermore, Contractor shall burn, pulverize, or shred papers and destroy or erase all electronic media that contain Utilities' customer Confidential Information upon termination of this Contract or completion of the Services and/or the delivery of Goods, whichever is sooner, or such other time(s) as may be specified in this Contract so that such Confidential Information cannot practically be read or reconstructed. Utilities has the right, but not the obligation, to audit Contractor's compliance with this Section 12, "Confidentiality", by providing Contractor written notice 24 hours in advance of such audit.
- 11.4. The recipient of Confidential Information shall not use or disclose Confidential Information unless expressly authorized in this Contract or by the disclosing Party in writing except for the purpose of (a) evaluating the information disclosed by the disclosing Party or (b) performing duties or exercising rights pursuant to this Contract. Notwithstanding anything provided herein to the contrary, disclosure to the officers, appointees, employees, agents, or attorneys of Utilities who need to know the Confidential Information will not be deemed to be a disclosure of Confidential Information in violation of this Section. In the event either Party receives a request for such Confidential Information from a third party, notice thereof shall promptly be given to the other Party. The recipient shall take all reasonable steps to prevent any unauthorized possession, use, transfer or disclosure of such Confidential Information. In the event Utilities is required to disclose, or in good faith believes that it is required to disclose, Confidential Information pursuant to any law, court order, or order or regulation of a governmental agency, Utilities shall attempt to notify Contractor of the requirement imposed on Utilities to disclose the Confidential Information and Contractor may seek a protective agreement or protective order from a judicial or administrative tribunal at Contractor's sole expense; however, Utilities has no obligation to seek such a protective agreement or order from a judicial or administrative tribunal relating to the disclosure of the Confidential Information. The failure of Contractor to obtain a protective agreement or order prior to Utilities obligation to disclose the Confidential Information shall serve to relieve Utilities of any obligation assumed by Utilities under this Contract for the disclosure of that Confidential Information. Should the recipient learn of any such unauthorized possession, use, transfer or disclosure, it shall promptly notify the other Party. If requested, the recipient shall deliver to the other Party, all Confidential Information (including all copies) disclosed to it with respect to this Contract.
- 11.5. The disclosure provisions of this Section shall not apply to information that a) the Parties had in their possession prior to disclosure by the other Party; b) becomes public knowledge through no fault of the recipient; c) the recipient lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; or d) is required to be disclosed by law or court order.

**12. Independent Contractor** - Contractor understands and agrees that Contractor and Contractor's employees, agents, subcontractors or other personnel are not Utilities' employees. Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefits to Contractor or any of Contractor's employees, agents, subcontractors or other personnel performing, directly or indirectly, Contractor's obligations specified herein. Further, it is expressly understood and agreed that neither Contractor nor Contractor's employees, agents, subcontractors or other personnel shall be entitled to any Utilities' payroll, insurance, unemployment, Worker's Compensation, retirement or any other benefits whatsoever. Contractor will remain objective at all times and shall have no conflicts of interest. A conflict of interest exists when there is any personal or financial relationship that could influence or be perceived to influence the representation or conduct of business for, or on behalf of, Utilities. Any conflict of interest and/or potential conflict of interest will be reported to Utilities in writing within fifteen (15) calendar days from the date of discovery of the conflict of interest/potential conflict of interest. Contractor shall send the written notice of conflict of interest/potential conflict of interest to the Procurement and Contract Services Representative.

**13. Warranty –**

- 13.1. Contractor expressly represents and warrants that all Goods and Services furnished under this Contract shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Contractor represents and warrants that: (i) Goods and Services shall conform to all specifications and appropriate standards and shall be free from defects in material or workmanship; (ii) all Goods and Services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which Goods and Services of that kind are normally used; (iii) all Goods will be new and will not be used or refurbished; and (iv) it has all necessary right, power and authority to enter into this Contract. If Contractor knows or has reason to know the particular purpose for which Utilities intends to use the Goods and Services Contractor warrants that such Goods and Services will be fit for such particular purpose. Inspection, testing, acceptance or use of the Goods and Services furnished hereunder shall not affect Contractor's obligation under this warranty and such warranties shall survive inspection, testing, acceptance and use. If the Goods include hazardous Goods, Contractor represents and warrants that Contractor understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous Goods.
- 13.2. Contractor's warranty shall run to Utilities, its successors, assigns and customers, and users of the Goods and Services. Contractor agrees to replace or correct defects of any Goods and/or Services not conforming to the foregoing warranty promptly without expense to Utilities, when notified of such nonconformity by Utilities, provided Utilities elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects or replace nonconforming Goods and/or Services promptly, Utilities, after reasonable notice to Contractor, may make such corrections or replace such Goods and/or Services and charge Contractor for the cost incurred by Utilities in doing so.

- 13.3. The warranty period for Goods is [three years (thirty-six (36) months)] from the date of delivery receipt by Utilities. During the warranty period, Contractor guarantees that the Goods shall be free from defects of material and workmanship and agrees to replace, F.O.B. destination point, any part or parts determined by Utilities to require replacement, provided Utilities gives prompt notice of the defective Goods or workmanship or failure to conform to the required specifications for the Goods. If the defect or failure is not covered by warranty, an estimate of charges will be furnished before work begins. In the event of a warranty claim the warranty remedy period shall be extended for an additional three (3) months beyond the original warranty period.
- 13.4. If it is shown within two (2) years of completion of Services that Contractor or its subcontractors committed an error in the performance of Services or that normal standards of care and diligence have not been met, and Utilities promptly notifies Contractor of such an error or deficiency, Contractor shall perform corrective Services at no cost to Utilities as may be necessary to remedy the error or deficiency.
- 13.5. Contractor guarantees equipment of other manufacturers only insofar as such equipment is guaranteed to it. Contractor shall inform Utilities of warranty guarantees of other manufacturers. Contractor's warranty, and any manufacturers' warranties it receives on any Goods and Services shall run to Utilities, its successors, assigns and customers, and users of the Goods and Services.
- 14. Indemnification –**
- 14.1. To the fullest extent permitted by law, Contractor hereby releases Utilities and shall fully protect, defend, indemnify and hold harmless Utilities, the City of Colorado Springs, and the City Council for the City of Colorado Springs, the Colorado Springs Utilities Board of Directors, and their respective employees, agents and representatives from and against any and all claims, costs (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature to the extent caused by the willful misconduct, or the negligent, reckless or tortious acts or omissions of Contractor or anyone for whose acts Contractor may be liable in the performance of its obligations under this Contract.
- 14.2. Intellectual Property/Infringement. Contractor will indemnify Utilities against a claim that any Service, as provided by Contractor to Utilities and used within the scope of this Contract, infringes any copyright or any United States patent or trademark, or incorporates any misappropriated trade secret. Contractor will pay any liabilities, costs, damages, or expenses, including reasonable attorneys' fees, attributable to such a claim that are incurred by Utilities and/or awarded against Utilities in a final judgment or settlement approved in advance and in writing by Contractor, provided that Utilities notifies Contractor in writing within thirty (30) days of the claim.
- 14.3. Nothing in this Contract shall be interpreted to limit or prevent the protections afforded to Utilities or the City of Colorado Springs under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
- 15. Minimum Insurance Requirements -**
- 15.1. See Exhibit I, "Insurance Requirements"
- 15.2. The types and amounts of Insurance required under this Contract or any exhibit attached hereto do not in any way limit the liability of the Contractor, including under any warranty or indemnity provision of this Contract, or any other obligation whatsoever Contractor may have to Utilities or others.
- 15.3. Utilities and Contractor agree that the insurance required under Exhibit I shall be for the benefit of Contractor and Utilities. Nothing in this Contract or any exhibit attached hereto shall be construed to limit Utilities' ability to recover under any of the policies of insurance required in Exhibit I.
- 16. Changes -** Utilities may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, Statement of Work, or Specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and/or (iv) delivery schedule. Subject to Section 22, "Appropriation of Funds", if any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Utilities may agree to an equitable adjustment in the Contract price and/or delivery schedule, and the Contract will be modified accordingly upon mutual written agreement by authorized representatives of the Parties. Any request by either Party for additional Goods or Services for changes in the manner or method of performance, shall be made only by written amendment, work change directive, or change order, which shall specify the part of the Contract affected by the change. Utilities shall not be liable for payment of any additional Goods or Services performed by Contractor not previously authorized by Utilities by written amendment, work change directive, or change order. Any claim for an equitable adjustment by Contractor must be submitted in writing to Utilities within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period. Failure to agree to any adjustment shall be resolved in accordance with Section 21, "Dispute Resolution". However, nothing contained in this provision shall excuse Contractor from proceeding without delay in the performance of this Contract as changed.
- 17. Force Majeure -** Neither Party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.
- 18. Dispute Resolution -** If a dispute arises between the Parties relating to this Contract, the following procedure shall be followed:
- 18.1. The Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party hereto of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing.
- 18.2. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
- 18.3. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the Parties.
- 18.4. The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter.
- 19. Appropriation of Funds -** This Contract is expressly made subject to the limitations of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract, with respect to any financial obligations of Utilities which may arise under this Contract in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient

amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-contract, attachment, schedule, or exhibit thereto, by Utilities.

20. **Termination for Cause** - In the event Contractor fails to perform any term or condition of this Contract, such failure shall constitute a default ("Default"). If the Default continues for a period of seven (7) days after Utilities provides Contractor with written notice thereof, then Utilities may, at its option, terminate this Contract or any part hereof for cause. Default shall include, but not be limited to, late deliveries, deliveries of Goods and/or Services which are defective or which do not conform to this Contract, and failure to provide Utilities, upon request, with reasonable assurances of future performance. In the event that this Contract is terminated in accordance with the foregoing, Utilities may take possession of any Goods for which Utilities has made payment, and may obtain any replacement Goods and/or complete the Services by whatever means Utilities may select. In the event Utilities terminates this Contract for cause, Utilities shall be entitled, in addition to all other remedies available at law or in equity, to the cost of replacement Goods above the cost originally contracted for by Utilities and Contractor, or to the cost of completing said Services, which such amount shall be deducted from the balance which would have been due to Contractor had the Contract not been terminated and the Goods and/or Services completed in accordance with the Contract. Contractor may terminate this Contract upon written notice to Utilities if Utilities fails to pay Contractor within sixty (60) days after Contractor notifies Utilities that payment is past due.
21. **Termination for Convenience** - Utilities reserves the right to terminate this Contract or any part hereof for its sole convenience. In the event of such termination, Contractor shall immediately stop all provision of all Goods and/or performance of all Services, and shall immediately cause any of its suppliers or subcontractors to cease such provision of Goods and/or performance of Services. Contractor shall be paid a reasonable termination charge consisting of a percentage of the Contract price reflecting the percentage of the Goods and/or Services completed and accepted by Utilities prior to the effective date of termination, plus actual and reasonable direct costs resulting from termination, which shall not include loss of anticipated profits or revenue. Contractor shall not be paid for any Goods delivered and/or Services completed after receipt of the notice of termination, or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided.
22. **Ownership of Work Product** - For purposes of this Contract, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and Goods made, conceived or developed by Contractor alone or with others which result from, or relate to, the Goods and/or Services provided under this Contract. Standard Goods manufactured by Contractor and sold to Utilities without having been designed, customized or modified for Utilities do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of Utilities. Contractor hereby agrees to irrevocably assign and transfer to Utilities and does hereby assign and transfer to Utilities all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Utilities will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Utilities deems appropriate. Contractor agrees: (i) to disclose promptly in writing to Utilities all Work Product in its possession; (ii) to assist Utilities in every reasonable way, at Utilities' expense, to secure, perfect, register, apply for, maintain, and defend for Utilities' benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Utilities' name as it deems appropriate; and (iii) to otherwise treat all Work Product as Utilities' Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Contract.
23. **Non-Discrimination** - Utilities is committed to equal employment opportunity for all and maintains and implements equal opportunity and affirmative action where necessary in all of its daily operations. Utilities is a federal subcontractor and an affirmative action employer subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Jobs for Veterans Act, as amended, and Section 503 of The Rehabilitation Act of 1973, as amended. Contractor and subcontractor(s) with whom Utilities contracts may be obliged to undertake Affirmative Action to provide equal employment opportunity without regard to race, color, religion, national origin, sex, veteran status or disability. Additional obligations may be imposed on Contractor and subcontractor(s) with whom Utilities contracts by the above-cited Executive Order and federal statutes. Contractor and all subcontractor(s) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or individuals with disability.
24. **Audit** - Contractor shall maintain accurate documents, papers and records of all amounts billable to, and payments made by, Utilities hereunder and related to the Goods and Services in accordance with recognized accounting practices, and as required by laws and regulations, and in a format that will permit audit, for a period of three (3) years after payment of the last invoice related to this Contract or resolution of any claim, whichever is later. Such records shall be open to reasonable inspection and subject to audit and/or reproduction, during normal working hours, by Utilities or its authorized representative. Utilities shall give Contractor advance notice of intended audits.
25. **Severability** - Any provision or part of this Contract held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties, who agree that the Contract shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.
26. **Assignment** -
  - 26.1. Neither Party may assign or transfer any part of this Contract without the prior written consent of the other Party, except to an affiliate, but only if (i) the assignee agrees in writing to be bound by the terms of this Contract and (ii) the assigning Party remains liable for obligations under the Contract. Any other attempt to transfer or assign is void.
  - 26.2. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (i) the Party experiencing the change of control will provide written notice to the other Party within 30 days after the change of control, and (ii) the other Party may immediately terminate this Contract any time between the change of control and 30 days after it receives the written notice in subsection (i).
27. **Compliance with Laws and Regulation** - In providing Goods and/or performing Services hereunder, Contractor shall comply with any and all applicable state, federal and local laws, rules, regulations, ordinances, codes, permits, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. Pursuant to Colorado Revised Statutes Section 8-17.5-102, Contractor certifies that Contractor shall comply with the provisions of C.R.S. Sec. 8-17.5-102. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor

shall not knowingly employ or contract with an illegal alien to perform work under this Contract. For work to be performed under the Contract, Contractor represents, warrants, and agrees that it (i) has confirmed that it does not employ any illegal aliens, either through participation in the e-Verify Program administered by the Social Security Administration and Department of Homeland Security, or by participating in the Colorado Department of Labor and Employment program; and (ii) otherwise will comply with the requirements of C.R.S. Sec. 8-17.5-102(2) (b). Contractor shall inform Utilities of its choice of verification program and will comply with all reasonable requests made in the course of an investigation under C.R.S. Sec. 8-17.5-102 by the Colorado Department of Labor and Employment. If Contractor violates any requirement of this provision or C.R.S. Sec. 8-17.5-102, Utilities may terminate this contract for breach.

28. **Safety and Health** - All work performed under this Contract shall be in accordance with applicable OSHA requirements. All Contractor personnel shall be included in any site safety/visitor requirements with the understanding that this Contract could require Contractor to fall under and comply with Utilities' Contractor Safety Program, if identified as applicable by Utilities' Project Manager, Procurement and Contract Services Representative or Safety & Health Office.
29. **Licenses** - Contractor must qualify for and obtain any required licenses and permits prior to providing Goods and/or Services.
30. **Security Compliance** - Contractor agrees that Contractor, all Contractor personnel, and all subcontractors shall comply with all of Utilities' then current security policies, rules, procedures, and guidelines when at Utilities' locations and/or when accessing any Utilities' network. Bringing or possessing firearms, ammunition, explosives or other weapons on Utilities' property is prohibited. Contractor and its subcontractors are prohibited from having weapons on their person while on Utilities' sites. Utilities' security policy is available upon request.
31. **Governing Law** - This Contract shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of litigation, this Contract shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in Colorado Springs City Code § 12.1.108. In the event of any dispute over the Contract's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.
32. **Survival of Obligations** - All representations, indemnifications, warranties, ownership of Goods, license grants, promises regarding protection of Confidential Information, and guarantees made in, required by, or given in accordance with this Contract will survive the payment, completion, and acceptance of Goods and Services, or termination or completion of the Contract.
33. **Setoff** - All claims for money due or, to become due, from Utilities shall be subject to deduction or set-off by Utilities by reason of any counterclaim arising out of this or any other transaction with Contractor.
34. **Non-Exclusive Contract** - This is not an exclusive Contract. Utilities is free to engage others to purchase Goods and/or Services.
35. **No Publicity** - Contractor shall not advertise or promote using the name or description of Utilities, without prior written consent of Utilities.
36. **Price Warranty** - Contractor warrants that the prices and rates stated herein represent currently established prices and rates and are no higher than would be charged to any other customer, whether commercial or the United States government or any agency of a local or state government, for similar services in like quantities.
37. **Waiver** - Utilities' failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Utilities' waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
38. **Entire Agreement** - This Contract constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. The terms and conditions of this Contract shall prevail notwithstanding any variance with the terms and conditions of any acknowledgement or other document submitted by Contractor. The Parties specifically agree that any language or provisions contained on Contractor's web site, bid, proposal, acknowledgment, product schedule or other ordering document, or contained in any "shrinkwrap" or "clickwrap" agreement, shall be of no force and effect and shall not in any way supersede, modify, supplement or amend this Contract. This Contract may be amended by a Purchase Order Change issued by Utilities. Email and all other electronic (including voice) communications from Utilities in connection with this Contract are for informational purposes only. No such communication is intended by Utilities to constitute either an electronic record or an electronic signature or to constitute any agreement by Utilities to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.