

Agreement for Enhanced Locating Services



THIS AGREEMENT is made and entered into this _____ day of _____, 20____ (“Effective Date”) by and among COLORADO SPRINGS UTILITIES, an enterprise of the City of Colorado Springs, a home rule municipality and municipal corporation, with its principal place of business at 121 South Tejon Street, Colorado Springs, Colorado 80903, and _____, with its principal place of business at _____ (“Customer”). Colorado Springs Utilities and Customer may be referred to individually as “Party” or collectively as the “Parties.”

RECITALS

Whereas, Colorado Springs Utilities is an owner and operator of certain underground public utility facilities; and

Whereas, Customer is involved in excavation activities which require it to be aware of the location of Colorado Springs Utilities’ underground utility facilities in order to prevent damage to such facilities or injuries to persons; and

Whereas, Customer’s need to have Colorado Springs Utilities’ utility facilities located may or may not be recurrent; and

Whereas, pursuant to Colorado law (C.R.S. §§ 9-1.5-101 to -106) Customer is required to notify the statewide notification association two business days prior to any excavation activity, not including the day of actual notice; and

Whereas, Colorado Springs Utilities, once receiving notice, is required to use reasonable care to advise Customer of the location of Colorado Springs Utilities’ underground public utility facilities; and

Whereas, Customer at times may request that Colorado Springs Utilities locate Colorado Springs Utilities’ underground public utility facilities after normal business hours and on weekends in order to meet Customer’s schedule; and

Whereas, Colorado Springs Utilities will locate Colorado Springs Utilities’ underground public utility facilities after normal business hours and on weekends if it has the resources available at the time and such is paid for by the Customer;

Now, Therefore, in consideration of the mutual covenants and benefits contained in this Agreement, the Parties agree to the following terms and conditions:

AGREEMENT

- 1. Scope.** Colorado Springs Utilities agrees to provide Customer, upon receiving a request from Customer, with locating services for Colorado Springs Utilities’ underground public utility facilities as provided for in this Agreement and in accordance with Colorado Springs Utilities’ Enhanced Locating Services Program (“Enhanced Locating Services”). In supplying Enhanced Locating Services, Colorado Springs Utilities will provide locate information as required by C.R.S. § 9-1.5-103(4)(a).

When Customer’s request involves locating services to be accomplished after Colorado Springs Utilities’ normal business hours (Monday through Thursday after 4:30 p.m. or Friday after 3:30 p.m.) or on weekends for any one of Colorado Springs Utilities’ underground public utility facilities (i.e., water, wastewater, gas, and electric), then Customer agrees to pay for such services, as provided for in this Agreement.

Once Customer requests Enhanced Locating Services, Colorado Springs Utilities will, in its discretion determine the available resources and job requirements based in part on information from Customer. In the event Colorado Springs Utilities determines, in its sole discretion, that it has resources available to provide Customer with Enhanced Locating Services, it may do so.

Customer acknowledges and agrees that Colorado Springs Utilities expressly reserves the right to schedule all Enhanced Locating Services and Customer’s request may be performed during multiple locate sessions by Colorado Springs Utilities, at Colorado Springs Utilities’ discretion, based on the available resources and job requirements based in part on information from Customer.

Colorado Springs Utilities will attempt to complete Enhanced Locating Services in the timeframe requested, however, Customer agrees to pay Colorado Springs Utilities for all locating services performed after normal business hours or on weekends at the rate set forth in this Agreement, even if locating services performed did not meet the requested timeframe.

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Colorado Springs Utilities makes no guarantee that it will be able to provide any Enhanced Locating Services, even after requested by Customer and agreed to by Colorado Springs Utilities. Colorado Springs Utilities merely makes these services accessible to the Customer if resources, as determined by Colorado Springs Utilities, are available. Should Colorado Springs Utilities be unable to provide such Enhanced Locating Services as requested by Customer, for any reason whatsoever, Colorado Springs Utilities shall have no liability to Customer whatsoever, including but not limited to, any liabilities covered by Paragraph 9, or any liabilities for Claims, as defined in Paragraph 10.

- 2. **Term.** The term of this Agreement shall be for the period of time from the Effective Date to when Colorado Springs Utilities, in its sole discretion, decides to terminate or modify its Enhanced Locating Services Program or as may be earlier terminated by one or more of the Parties pursuant to this Agreement.
- 3. **Modifications.** Colorado Springs Utilities expressly reserves the right to modify or cancel in part or whole at anytime its Enhanced Locating Services Program and/or terminate this Agreement, upon notice to Customer.
- 4. **Compensation.** Customer shall pay Colorado Springs Utilities for Enhanced Locating Services furnished on an hourly basis. Such hourly rate shall be \$65.00 per hour per person, with a minimum work order of \$100.00. Customer also agrees to pay for any portion of an hour based on the appropriate fraction of this hourly rate. Colorado Springs Utilities reserves the right to change such hourly rate by providing notice to Customer at the time any Enhanced Locating Services are requested. Invoices will be prepared in accordance with Colorado Springs Utilities' standard invoicing practices and will be submitted to Customer by Colorado Springs Utilities.

Payment of all invoices is due and payable within 30 days of receipt. In the event payment has not been made within this time period, Colorado Springs Utilities, after giving written notice to Customer, will suspend services under this Agreement until Colorado Springs Utilities has been paid in full all amounts due for Enhanced Locating Services rendered, including any expenses or related charges associated with Customer's failure to render payment as required by this Agreement. In the event of a disputed invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

- 5. **Requesting Enhanced Locating Services.** Customer authorizes the following individuals to request Enhanced Locating Services on Customer's behalf:

_____	_____
Name	Title
_____	_____
Name	Title
_____	_____
Name	Title
_____	_____
Name	Title
_____	_____
Name	Title

Customer understands that Colorado Springs Utilities will not provide Enhanced Locating Services requested by individuals who have not been authorized to the satisfaction of Colorado Springs Utilities.

- 6. **Other Underground Facilities.** Colorado Springs Utilities is not responsible and assumes no duty to locate any facilities of which it is not the owner or operator as provided for under C.R.S. §§ 9-1.5-101 to -106.
- 7. **Termination.** This Agreement may be terminated by Colorado Springs Utilities at any time if in its, sole discretion, Colorado Springs Utilities determines it will no longer offer the Enhanced Locating Services Program or if Customer fails to abide by the terms of this Agreement. Customer may terminate this Agreement at any time by providing Colorado Springs Utilities with notice. In the event of termination by Customer, Customer shall be obligated to tender payment to Colorado Springs Utilities in the manner provided for in this Agreement for any services rendered by Colorado Springs Utilities to Customer prior to the effective date of such termination.

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- 8. Disclaimer.** Nothing contained in this Agreement shall be deemed to waive any duty or requirement of either Colorado Springs Utilities or Customer under C.R.S. §§ 9-1.5-101 to -106. This includes, but is not limited to, Customer's responsibility to notify the statewide notification association, even though Customer may be receiving Enhanced Locating Services under this Agreement.
- 9. Damages.** Customer understands and agrees that the City of Colorado Springs, Colorado Springs Utilities, City Council, Utilities Board and their officers, directors, employees and agents shall not be liable in contract, in tort (including negligence and strict liability) or otherwise for damage to or loss of equipment or other property, incidental or consequential damages of any kind, including, without limitation, loss of use, lost profits or revenue, cost of capital or increased costs of construction or replacement services and equipment caused by Colorado Springs Utilities and Customer agrees to assume the risk of any indirect, incidental or consequential damages whatsoever arising from this Agreement or Colorado Springs Utilities' obligations under this Agreement.
- 10. Release/Indemnification.** Customer agrees to release, indemnify and hold harmless Colorado Springs Utilities, the City of Colorado Springs and its City Council, Utilities Board, officials, employees, agents, representatives, and assigns, from and against all liability, claims, demands, suits, actions, administrative proceedings, environmental claims, orders, damages, costs, judgments, levies, executions, expenses, assessments, fines and penalties, including court costs and reasonable expert witness and attorneys' fees (collectively "Claims"), arising out of or relating to any negligent act or omission of Customer or intentional misconduct by Customer.
- 11. Governmental Immunity.** This Agreement and Colorado Springs Utilities' actions pursuant to this Agreement shall be subject to the restrictions, provisions, and damage limitations contained in the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S. (the "Act"), now existing or as subsequently amended or any statute superseding the Act. Nothing contained in this Agreement shall be construed to constitute a waiver by Colorado Springs Utilities of the protections, defenses, and immunities, afforded it under the Act, now existing or as subsequently amended or any statute superseding the Act, or the protections, defenses and immunities of the Colorado Constitution. Nothing in this Agreement shall be construed or interpreted to require or provide for any liability of Colorado Springs Utilities for any injury to any person or any property damage whatsoever which is caused by the negligence or other misconduct of the Customer, its agents, employees, contractors, assigns, or successors. Additionally, nothing in this Agreement shall be construed or interpreted to require or provide for any duty of care on the part of Colorado Springs Utilities beyond that contained in the Act or C.R.S. §§ 9-1.5-101 to -106, now existing or as subsequently amended.
- 12. Governing Law/Venue.** This Agreement shall take effect under, be construed and enforced according to, and be governed by the laws in force in the State of Colorado and the Colorado Springs City Charter, City Code, ordinances and regulations. The exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court for El Paso County, Colorado Springs, Colorado, and, if necessary for exclusive federal questions, the United States District Court, District of Colorado, Denver, Colorado.
- 13. Notice.** Any notices required under this Agreement shall be in writing and sent to the Parties via facsimile machine, with proof of receipt, certified or registered U.S. mail, return receipt requested, or overnight courier, with proof of delivery, at the following addresses:

If to Customer:

Telephone: _____

Facsimile: _____

If to Colorado Springs Utilities:

Colorado Springs Utilities
ATTN: Locating Services
P.O. Box 1103, Mail Code 1346
Colorado Springs, CO 80947 - 1346
Telephone: 719-668-7205
Facsimile: 719-668-7246

The Parties may change the address and person to whom notices are to be sent by written notice to the other Party.

14. Miscellaneous

- 14.1** The terms of this Agreement shall be deemed accepted by Colorado Springs Utilities and Customer upon acknowledgement and execution of this Agreement. The execution of the Agreement by Colorado Springs Utilities and Customer expressly implies agreement to be bound by these terms. This Agreement constitutes the entire understanding between the Parties. Any waiver, modification, or amendment of the Agreement shall be effective only if in writing and signed by an authorized representative of Colorado Springs Utilities and Customer. Each Party shall perform hereunder in accordance with applicable laws, rules, and regulations now or hereafter in effect. If any provision of this Agreement shall be found to be illegal or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken for as long as it remains illegal or unenforceable.

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- 14.2** This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 14.3** Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the Parties and their respective successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.
- 14.4** In accordance with the Colorado Springs City Charter, performance of Colorado Springs Utilities' obligations under this Agreement is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Colorado Springs Utilities' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement shall thereafter become null and void by operation of law, and Colorado Springs Utilities shall thereafter have no liability for compensation or damages to the Customer in excess of Colorado Springs Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Colorado Springs Utilities shall notify Customer as soon as reasonably practicable in the event of non-appropriation or in the event a spending limitation becomes applicable.
- 14.5** Non-enforcement of any provision of this Agreement by Colorado Springs Utilities shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or the remainder of this Agreement.

In Witness Whereof, the Parties hereto acknowledge they are authorized to sign on behalf of their respective entity, and have caused this Agreement to be executed the day and year first above written.

Customer

Colorado Springs Utilities

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to Form:

Springs Utilities General Counsel