

**COLORADO DEPARTMENT OF TRANSPORTATION
COMMON USE AGREEMENT**

THIS AGREEMENT, made and entered into on this _____ day of _____, 20_____, is by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation ("CDOT", "the Department", or "the State") and _____ ("Company").

WHEREAS:

1. The Company owns or possesses certain easement or right of way ("Company's Easement"), which is generally described as follows: _____
2. The Department has acquired certain real property ("Highway Right of Way") for highway purposes, which is generally located as follows:

County of _____ State Highway No. _____
Highway Construction Project No. _____
Highway Right of Way Project No. _____
Located between Highway Stations numbered. _____ to _____
3. The Department desires the right to occupy and use a portion of the Company's Easement ("Area of Common Use"), which is particularly described as follows: _____
4. The Department and the Company agree that it is in the mutual interest of both parties hereto to identify the mutual respective rights and obligations of the parties in and to the Area of Common Use, in order to avoid conflict.

NOW THEREFORE, THE DEPARTMENT AND THE COMPANY AGREE:

1. The Company hereby consents to the use and occupancy by the Department of the above-referenced Highway Right of Way over, along and upon the Company's Easement in the Area of Common Use, subject to the terms and conditions herein contained.
2. The Department acknowledges the Company's title to the Company's Easement in said Area of Common Use and the priority of the Company's title over the title of the Department therein. The Company reserves the right and shall continue to have an easement to use said Area of Common Use in common with the public use of said Highway for all of the purposes for which the Company's Easement was acquired.
3. If at any time the Company desires to enter upon Highway Right of Way to construct, operate, repair, and/or maintain the Company's facilities, the Company shall give advance notice to and obtain prior approval from the Department's Regional Transportation Director or authorized representative, and shall comply with all terms and conditions of a permit issued by the Department covering such approved activity. If, due to an emergency, the Company is unable to comply with the aforementioned notice and approval requirements, the Company shall notify the Department as soon as possible after discovering the emergency situation, and thereafter shall comply with any instructions which may be issued by the Department in response to the emergency. In all cases, the Company shall make adequate provision for the protection and safety of the traveling public.
4. If at any time the Department undertakes improvements of Highway Right of Way ("highway construction") that necessitates the relocation, reconstruction, removal, or abandonment of any of the Company's facilities that are located in the Area of Common Use ("the Work"), the Department shall notify the Company in writing of such necessity. Upon receipt of such notice, the Company shall cooperate with the Department in the performance of the Work in a manner consistent with the interests of both parties, and at a time convenient to and in coordination with the highway construction. Such work shall be performed by or under the direction of either the Department or the Company, as agreed upon in writing in advance by the parties. In any case, the Department shall be responsible for all eligible Work costs as determined in accordance with applicable state and/or federal laws and regulations.

5. If as a result of highway construction as provided in clause 4., above, the Company must terminate use and occupancy of all or part of the Area of Common Use, the Company shall execute a quit claim ceding to the Department all rights of the Company to such property, and, if necessary, the Department will provide just compensation to the Company for its Easement or portion thereof so terminated.
6. Except as expressly set forth herein, this agreement shall not in any way alter, modify or terminate any provision of the Company's Easement. The Department and the Company shall mutually occupy and use said Area of Common Use in such a manner as not to interfere unreasonably with the right of the other party. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which the Company or the Department may now have or may hereafter acquire due to the construction of additional facilities or the alteration of existing facilities by either the Department or the Company in such a manner as to cause an unreasonable interference with the use of said Area of Common Use by the other party.
7. This agreement shall inure to the benefit of and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their respective officials thereto duly authorized.

STATE OF COLORADO
DEPARTMENT OF TRANSPORTATION

Region Transportation Director

COMPANY

Title:

Witness