

## Terms and Conditions of Fiber Infrastructure in ROW:

Version 1.122023

Effective Date: 12/21/2023

Pursuant to Executive Order D 2022 009 (restated in June 2022 in EO D 2022 023), Senate Bill 22-083 and C.R.S. §§ 43-1-1201, *et seq.*, C.R.S. § 43-1-210, and Federal Telecommunications Act of 1996, the Colorado Department of Transportation (CDOT) must receive fair and reasonable compensation from telecommunications providers on a competitively neutral and nondiscriminatory basis for the use of public rights-of-way.

CDOT adopted Transportation Commission Resolution #8 on December 20, 2023. Transportation Commission Resolution #8 includes adopting initial and annual payments for fiber builds within CDOT rights of way. Currently, the one-time Initial Application Permitting Fee for permitting costs is \$0.05 per foot. The annual Property Use Surcharge is \$0.10 per foot urban counties<sup>1</sup> and \$0.03 per for the remaining non-urban counties. (Urban counties currently include Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld). The Department will adjust the fee structure by implicit price deflator-gross national product (IPD-GNP) annually, and such adjustments shall apply to new permit applications submitted on or after the effective date of any such adjustment. Nothing contained within the Terms and Conditions, any permit(s) issued in accordance with these Terms and Conditions, and/or the fees charged by CDOT shall be construed as granting Applicant or Permittee any type of property interest in the permitted location. These Terms and Conditions are hereby incorporated by reference into all applicable permits issued by CDOT for fiber infrastructure installation within CDOT's rights of way as if fully set forth therein.

Fiber Communication Permits for Telecommunications applicants must comply with the following terms and conditions for each Fiber Communication Permit issued by CDOT.

The Applicant is responsible for the following functions:

- a. Apply for and obtain the applicable CDOT Region Fiber Communication Permit for Fiber Infrastructure and comply with all applicable provisions, terms, and conditions of the applicable CDOT Region Fiber Communication Permit for Fiber Infrastructure.
- b. Pay applicable Initial Application Permitting Fee. Payments shall be made via CDOT's online permitting application which includes options for payment by credit card or electronic check. Failure to pay the Initial Application Permitting Fee will result in denial of the applicable permit application, and failure to make payments may result in other permits issued for the Applicant and Permittee to be withheld until the Applicant brings all existing permits into compliance with required terms and conditions.

The Permittee shall perform and be responsible for the following functions:

- a. Pay applicable Annual Property Use surcharge by the immediately preceding January 31st. For example, if a Permittee is issued a Fiber Communication Permit issued within the calendar year 2024, the Permittee must pay the Annual Property Use surcharge on or before January 31st, 2025. Payments shall be made via CDOT's online permitting application which includes options for payment by credit card or electronic check. Failure to make payments may result in the applicable permit and potentially other permits issued for the Applicant and Permittee to be withheld until the Applicant and Permittee brings all existing permits into compliance with

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<sup>1</sup> For purposes of these Terms and Conditions of Fiber Infrastructure in ROW, urban counties include those counties within the State of Colorado with populations greater than two hundred thousand (200,000) people.

- required terms and conditions.
- b. Comply with all the requirements and additional terms and conditions set forth in, outlined, attached to, and/or otherwise referenced within the issued permit.
  - c. Manage and administer work, records and all related activities to ensure that all applicable federal and state statutes, regulations, standards, plans, specifications and procedures are satisfied.
  - d. Apply for and obtain any and all other federal, state and/or local permits that may be necessary.
  - e. Comply with provisions pertaining to federal and state law regarding nondiscrimination, competitive neutrality and equal access to fiber infrastructure on CDOT ROW, which access is granted to Permittee on a non-exclusive basis. These provisions require, among other things, that Permittee allow competitor access to excess fiber capacity on commercially reasonable terms consistent with federal and state law, access of which shall not be unreasonably withheld by Permittee.
  - f. Permittee shall perform all applicable maintenance related activities on the Permittee owned fiber optic infrastructure, including but not limited to registering the facility with Utility Notification Center of Colorado (UNCC) and responding to locate notices/requests.
  - g. Apply for and obtain the applicable CDOT Region Maintenance Permit and comply with all applicable provisions, terms and conditions of the applicable CDOT Region Maintenance Permit in order to perform maintenance activities on all Permittee owned fiber infrastructure if applicable.
  - h. Permittee shall, with respect to any and all routine preventative maintenance and/or emergency and extraordinary repairs performed on the Permittee owned fiber infrastructure within the CDOT ROW, restore the affected area, including but not limited to, roadway pavement section, landscaping, trees, sod, sprinkler systems and pathways, to the same or better condition as before. Failure by Permittee to comply with this provision shall provide basis for CDOT to terminate the Fiber Communication Permit. Permittee shall maintain the Permittee owned fiber infrastructure in good repair and in tenantable condition free of trash and debris at all times.
  - i. Permittee may utilize sub-Permittees to perform any or all of its obligations under this Permit without obtaining the prior written consent or approval of CDOT, provided that said sub-Permittees comply with all provisions of this Agreement, the applicable CDOT Region Utility/Fiber Communication/Special Use Permit(s), and any applicable CDOT Region Maintenance Permit(s). Permittee shall ensure all of its sub-Permittees have fully reviewed and understands these Terms and Conditions and the applicable permit(s) issued by CDOT prior to any sub-Permittee performing any work on the applicable project.
  - j. Under no circumstances shall Permittee be entitled to a refund in whole or in part of any previously paid fee(s) and/or surcharge(s) for any applicable permit(s) revoked by CDOT for Permittee's non-compliance or for any other reason.
  - k. If CDOT reasonably suspects that Permittee has not used, maintained or operated the Fiber Infrastructure, CDOT may, in its sole discretion, deliver written notice to Permittee regarding such suspected non-use by Permittee during the preceding two (2) year period from the date CDOT delivered its written notice to Permittee. Permittee shall respond to CDOT in writing within sixty (60) days of its confirmed receipt of such notice, and the following shall apply:
    - i. If Permittee responds that it has, in fact, used, maintained or operated the Fiber Infrastructure within the preceding one (1) year period and provides reasonable evidence of the same, CDOT shall not treat the Fiber Infrastructure as abandoned.
    - ii. If Permittee responds that, notwithstanding its non-use of the subject Fiber Infrastructure during the preceding one (1) year, Permittee has bona fide plans to use the same within the next one (1) year, CDOT shall not treat the Fiber Infrastructure as abandoned. If Permittee does not subsequently begin to use Fiber Infrastructure in that next year, CDOT may thereafter treat it as abandoned.
    - iii. If Permittee responds that it intends to abandon the Fiber Infrastructure, the same shall be considered abandoned in place as of the date so indicated by the Permittee, which date

shall not be later than one (1) year after the date of the Permittee's statement of its intent to abandon. Thereafter, Permittee shall provide to CDOT as-built documents showing the location of all Permittee Fiber Infrastructure and, at the request of CDOT, remove and aboveground facilities associated with the same and restore the CDOT ROW to a safe condition. Permittee shall be solely responsible for all costs incurred to remove any such aboveground facilities and to restore the CDOT ROW to a safe condition.

- iv. If Permittee does not respond within sixty (60) days of its confirmed receipt of the notice, CDOT may provide written notice instructing Permittee to begin to wind down its use of the Fiber Infrastructure and stating that CDOT will treat as abandoned and ownership/use shall revert to CDOT for any Fiber Infrastructure remaining in CDOT ROW one (1) year after the date of such notice.
- l. Relocation: Due to highway and/or transportation projects in the CDOT ROW, it may become necessary to relocate a portion, or all, of the Permittee's fiber infrastructure within the CDOT rights-of-way. If such relocation becomes necessary for whatever reason, the Permittee shall be solely responsible for all costs incurred to relocate all of the Permittee's fiber infrastructure. To accomplish relocation of the Permittee fiber infrastructure for which the Permittee is solely and entirely responsible, Permittee shall have the following two (2) options:
  - i. Engage a Contractor to relocate Permittee fiber infrastructure in accordance with CDOT construction plans and schedules. Permittee shall direct such Contractor to coordinate with the Contractor CDOT engages to perform construction and relocation of the Permittee fiber infrastructure to ensure that it is relocated in a coordinated manner and that the project is successfully completed.
  - ii. Authorize the Contractor engaged by CDOT to relocate Permittee fiber infrastructure in accordance with CDOT construction plans and schedules. Permittee shall be solely responsible to pay for all costs associated to relocate Permittee fiber infrastructure. Due to the vested interest that Permittee has in fiber infrastructure installed in the CDOT ROW, CDOT shall use commercially reasonable efforts to give Permittee notice of relocation as soon as CDOT becomes aware of such relocation and CDOT shall keep Permittee well informed throughout the entire relocation process, including but not limited to, development of relocation project plans and schedules. Also, CDOT shall give Permittee an official notice that identifies the schedule at least one hundred twenty (120) days prior to the commencement of such relocation project.
- m. Permittee's rights and obligations under this Permit are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Permittee's rights and obligations approved by the State shall be subject to the provisions of this Permit.
- n. No part of a Fiber Infrastructure and related ground equipment erected or placed on the ROW by Permittee will become, or be considered by CDOT as being affixed to or a part of, the ROW. All portions of the Fiber Infrastructure and related ground equipment constructed, modified, erected, or placed by Permittee on the ROW will be, and remain the property of Permittee, and may be removed by Permittee at any time, provided the Permittee shall notify the CDOT Region Permit office prior to any work in the ROW.
- o. Loss of Use: Permittee's loss of use of the Fiber Facility shall not entitle such Party to any damages or loss from CDOT or the State of Colorado, in any manner whatsoever, for loss of use, which loss of use could be attributed, but not limited to, as a result of any Routine Preventative Maintenance, Registering the Project Facility with UNCC, Emergency and Extraordinary Repairs or any other activity described in this same Section or any other unforeseen circumstance that may result in such loss of use, and such loss of use does not relieve Permittee from any obligations assumed by this Permit, or from complete and proper fulfillment of the terms and conditions of this Permit, neither does it entitle

the Permittee to any compensation for damages or loss from CDOT or the State of Colorado, in any manner whatsoever, for such loss of use.

- p. CDOT shall, at all times, have the right to access and inspect all equipment and infrastructure within the CDOT ROW to ensure that it complies with environmental regulations such as Storm Water Construction Permit as required by the Colorado Department of Health, applicable CDOT Region Utility/Fiber Communication/Special Use Permit(s) and the applicable CDOT Maintenance Permit(s).

The Colorado Department of Transportation is responsible for the following functions:

- a. Upon receipt of Initial Application Permitting Fee payment and all other necessary information/documentation, issue the applicable CDOT Region Fiber Communication Permit(s) for Fiber Infrastructure after receiving the applicant's properly completed and compliant application.
- b. Compile all applicable Annual Property Use Rate Surcharge payments for individual Permittees for permits issued within the previous calendar year. CDOT will provide a reminder to each Permittee showing each issued permit and the applicable Annual Property Use Rate Surcharge for the previous calendar year by January 1st.

\_\_\_\_\_ **I have read, reviewed and understand CDOT's Terms and Conditions of Fiber Infrastructure in ROW in their entirety and expressly agree to fully comply with all Terms and Conditions.**