

COLORADO DEPARTMENT OF TRANSPORTATION
POSSESSION AND USE AGREEMENT

Project Code:
Parcel No:
Project No:
Location:

This agreement is made this _____ day of _____ a.d. 20_____ between the State Department of Transportation, State of Colorado, (herein referred to as the department), and _____ (herein referred to as the landowner) for the purpose of granting the irrevocable right to possession and use to the department, its contractors, agents, and all others deemed necessary by the department of parcel(s) _____ of Project No. _____ for the purpose of constructing a portion of State Highway No. _____. The property involved is described more fully in Exhibit A (and Exhibit B) attached hereto and made a part hereof by reference.

1. In consideration for this irrevocable grant of possession the department will tender to the landowner(s) the sum of \$ _____. The department shall be entitled to take possession upon tender of payment. It is understood the sum tendered represents _____ percent of the department's appraised value of the just compensation owed to the landowner(s). It is agreed this sum shall be deducted from any final settlement amount, award, or verdict. It is also agreed in the event the ultimate settlement amount, award, or verdict is less than this sum the undersigned landowner(s) shall refund the difference to the department.
2. The landowner(s) represents that the title to the property is free and clear of all liens and encumbrances or that proper releases will be executed for the property herein described prior to funds being disbursed under this agreement. The landowner(s) further agrees to hold the department harmless from all liability for unreleased or undisclosed liens or encumbrances affecting the property herein described.
3. This agreement is made with the understanding the department will continue to negotiate in good faith with the undersigned landowner(s) to acquire the interest in the property described by direct purchase. It is further understood in the event a settlement is not reached within _____ days of the signing of this agreement such failure will be a confession that the negotiations to acquire the property described herein have proved futile. At this point the department may begin proceedings in eminent domain to acquire title to the property herein described. The department shall not unreasonably delay the commencement of proceedings under the eminent domain law once the time provided for in this paragraph has expired. If the department begins proceedings in eminent domain, it is understood and agreed this agreement shall continue in effect until either a settlement is reached or a rule and order as provided for in C.R.S. 38-1-105(3) is entered by the court.
4. If the department begins proceedings in eminent domain it agrees to deposit the remaining amount of its appraised value of the just compensation owed to the landowner(s) into the registry of the court if it has not previously tendered 100 percent of this amount. Any sums deposited in the registry may be withdrawn by the undersigned landowner(s) if all parties interested in the property sought to be acquired consent and agree to such withdrawal. Any such withdrawal of said deposit shall be deducted by the clerk from any award or verdict entered thereafter or by the department from any settlement reached. It is agreed in the event the ultimate settlement amount, award, or verdict is less than the total of the sums paid to and withdrawn by the undersigned landowner(s); the undersigned landowner(s) shall refund the difference to the department.
5. It is agreed by the undersigned in the event proceedings in eminent domain are begun the valuation date for determining the amount of just compensation shall be the date on which payment was tendered to the landowner(s) pursuant to paragraph one above.
6. It is agreed by entering into this agreement the undersigned do not waive any right to raise any issue pertaining to just compensation at the time of trial.
7. The purpose of this agreement is to allow the department to proceed with its construction project without delay and to allow the landowner(s) to avoid litigation at this time.
8. The undersigned landowner(s) agree(s) to pay all taxes, including prorated taxes for the current year, and special assessments due at the time the department takes possession of its (their) property.
9. This agreement shall be deemed a contract and it shall bind the parties only when signed by all landowners or their designated representatives and one of the following on behalf of the department: Project Development Branch Manager, Right of Way Program Manager, Regional Transportation Director, Region Program Engineer, Region Right of Way Manager or their superiors. This contract shall also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties.
10. It is agreed the department shall record this document.
11. Other conditions.

Landowner agrees to indemnify and hold harmless the Colorado Department of Transportation from all claims and liability related to the presence, disposal, release or clean-up of any contaminants located on or attributable to activities occurring on the property prior to the execution of this agreement.

Landowner	SS# or FEIN#:	Date
Landowner	SS# or FEIN#:	Date
Region Right of Way Manager		Date