

RIGHT-OF-WAY FENCE CHANGE AGREEMENT

This Agreement, made this _____ day of _____, 20____ by and between the State of Colorado for the use and benefit of the Department of Transportation, State of Colorado, hereinafter referred to as "the State," and the undersigned Landowner, hereinafter referred to as "Landowner."

WHEREAS, the State owns the highway right-of-way property ("the Property") shown on the attached Exhibit A, which is adjacent to other property owned or controlled by the Landowner; and

WHEREAS, the Property is not part of a road construction project on non-interstate or non-controlled access highways where an existing fence has been removed as a result of that project or where no fence existed previously, as described in § 35-46-111, C.R.S., (as amended); and

WHEREAS, the Landowner no longer uses his adjacent property for agricultural purposes, and wishes to remove the current right of way fence, and wishes to construct a non-conforming fence along the property boundary; and

WHEREAS, the Landowner intends to remove the current fence along the boundary line between the Property and that of the Landowner; and

WHEREAS, the State requires monumentation or delineation of the State's boundary by the Landowner, and that the Landowner protect the State from damages or injuries resulting from any deviation of the State's standard fencing; and

WHEREAS, the State desires to allow the Landowner to remove such fence, provided that the Landowner complies with certain conditions to delineate the State's boundary line and to protect the interests of the State; and

WHEREAS, as consideration for granting landowner's request to remove the fence, the Landowner desires to comply with the conditions herein.

NOW THEREFORE, it is hereby agreed that,

1. The State owns the Property shown on Exhibit A, which is attached hereto and incorporated herein. If a right-of-way line for the Property is not indicated on a recorded deed of the Property, then the right-of-way fence line delineated on Exhibit A shall be the boundary line between the Property and property of the landowner. This Agreement shall be considered a boundary agreement as defined in § 38-44-112. C.R.S. (as amended).

If a right of way line for the Property is indicated on a recorded deed for the Property, then that right of way deed line shall be considered the accurate boundary between the Property and property of the landowner notwithstanding other designations of such right-of-way line including that shown on Exhibit A.

2. The Landowner shall replace the current fence along the right of way with the Standard Fence which shall be constructed pursuant to the covenants as contained herein.

3. The Landowner shall take all actions, including hiring a land surveyor if necessary, to erect the Standard Fence so as to accurately delineate the State's right-of-way line. The Landowner shall pay all costs of such construction of the Standard Fence and placement of any survey monuments. Should the Landowner be required to hire a surveyor, then that surveyor shall place survey monuments which shall comply with the attached State Standard Specification §§ 629.01 through 629.03. Construction of the Standard Fence and placement of any survey monuments shall be completed with ninety (90) days of the date of this Agreement.

4. The Landowner shall not use or allow the Property to be used for any purpose whatsoever, including but not limited to unauthorized access to the highway, parking, grazing, pasturing, irrigation, plowing, planting or harvesting.

5. The Landowner shall prevent any livestock, as defined in §35-46-101, C.R.S., as amended, any poultry, and any other animals from going onto the Property from the Landowner's property.

6. The Landowner shall maintain his fence in a manner consistent with the requirements of § 35-46-111, C.R.S. (as amended). The Landowner shall be solely responsible for all costs of such erection and maintenance.

7. The Landowner shall be responsible for any damage or injury to persons or to property which occurs on the Property, which would not have occurred if the right-of-way fence had been properly maintained.

8. To the extent authorized by law, the Landowner shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Landowner, or its employees, agents subcontractors, or assignees pursuant to the terms of this Agreement. Landowner understands that this indemnification provision may expose the Landowner to liability in the amount(s) provided in § 24-10-114, C.R.S., (as amended).

9. The State has the right to cancel this agreement at any time by sending written notice to that effect to the Landowner by certified mail, return receipt requested. Such notice shall be effective 45 days after the date of receipt. The State has the right to erect to or re-erect the right-of-way fence at any time subsequent to the effective date of that notice.

10. Any erection or re-erection of the right-of-way fence by the State at the request of the Landowner shall be at Landowner's sole expense.

11. This Agreement shall inure to the benefit of and be binding upon the parties, or any subcontractors, and their respective successors and assigns.

12. The waiver by the State of any term of this Agreement in one instance shall not be construed as a waiver of such term in other instances, nor as a waiver of any other term.

38-44-112. Agreements. Any line or disputed corner or boundary may be determined and permanently established by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate, clearly designating the same, and accompanied by a map or plat thereof which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors, and assigns.

35-46-101. Definitions.

(2) "Livestock" includes horses, cattle, mules, asses, goats, sheep, swine, buffalo, and cattalo.

24-10-114. Limitations on judgments.

(1) The maximum amount that may be recovered under this article in any single occurrence, whether from one or more public entities and public employees, shall be:

(a) For any injury to one person in any single occurrence, the sum of one hundred fifty thousand dollars;

(b) For an injury to two or more persons in any single occurrence, the sum of six hundred thousand dollars; except that, in such instance, no person may recover in excess of one hundred fifty thousand dollars.

(3) Nothing in this section shall be construed to permit the recovery of damages for types of actions authorized under part 2 of article 21 of title 13, C.R.S., in an amount in excess of the amounts specified in said article.