

# STATE OF WYOMING, DEPARTMENT OF TRANSPORTATION, SHARED RESOURCES AGREEMENT FOR FIBER OPTIC FACILITIES IN INTERSTATE RIGHT-OF-WAYS WITH

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## 1. PARTIES

The parties to this Agreement are \_\_\_\_\_, hereinafter referred to as Company, whose address is \_\_\_\_\_ and the Transportation Commission of Wyoming and the Wyoming Department of Transportation, whose address is 5300 Bishop Blvd, Cheyenne, Wyoming 82009-3340, hereinafter referred to as Agency.

## 2. PURPOSE

Agency has accepted the proposal from Company to furnish telecommunications infrastructure and/or services to the State of Wyoming in exchange for access to certain segments of Interstate right-of-way within the State. Agency will permit Company access to the sections of the Interstate right-of-way specified in this Agreement and its attachments for the purpose of installing Company owned communications infrastructure (principally fiber optics conduits, cables, and associated communication facilities). This Agreement is entered into in anticipation that the project will foster private sector competition and result in enhanced telecommunications services to the citizens of the State of Wyoming in metropolitan and rural areas. This Agreement specifies the terms and conditions agreed upon by the parties to enable Company to construct, operate, and maintain fiber optic communication facilities longitudinally within defined segments of the Interstate right-of-way in exchange for the consideration to the State of Wyoming as set within.

## 3. DEFINITIONS

- A. Agreement -The documents setting forth the obligations of the parties on the project including this Agreement and its attachments, and obligations listed herein all become a part of the Agreement.
- B. District - Agency District office where work is being done
- C. Person -Any natural person, association, corporation or partnership.
- D. Policy-Agency's "Utility Accommodation Regulation" dated April 1990
- E. Project -The defined sections of the Interstate highway right-of-way together with all appurtenances and construction to be performed thereon related to the installation of fiber optics under this Agreement.
- F. Permit - Agency Form M-54 License Agreement and its attachments

4. RIGHT-OF-WAY LOCATIONS

This Agreement authorizes Company to install facilities within the Interstate right-of-way as shown in this Agreement and its attachments and is incorporated herein by this reference.

5. COMPENSATION

In consideration of the permission granted herein by Agency, Company hereby agrees to provide the State of Wyoming the consideration described in this Agreement and its attachments that are incorporated herein by this reference, during the term of this Agreement.

6. RIGHT-OF-WAY USE

Company shall use Agency's Interstate right-of-way only for the construction, operation, repair, replacement and maintenance (collectively: operations) of a longitudinal fiber optic broadband facility and associated communication facilities. Any other use of the right-of-way without prior written permission from Agency shall constitute breach by Company of this Agreement. The use of the right-of-way along with all corresponding operations shall:

- A. Comply with the requirements of all applicable governing agencies including the Federal Communications Commission (FCC), the United States Corps of Engineers (USCE), Federal Highway Administration (FHWA), Department of Environmental Quality (DEQ), United States Forest Service (USFS), Bureau of Land Management (BLM), United States Fish and Game (USFG), etc.
- B. Comply with all laws, orders, ordinances, regulations, licenses and permits, if any, of federal, state, and local authorities.
- C. Not interfere with Agency's use of its property, the free and safe flow of traffic, Agency construction and maintenance work, or with Agency's radio or other communications unless written approval is expressly granted by Agency.
- D. Not interfere with the operations of any existing utility or carrier with facilities in the right-of-way.
- E. Not cause any public safety hazard.

7. PERMITS

Company shall follow Agency's utility permit/license process prior to the installation of its facilities.

Neither this Agreement nor any permit issued hereunder grants to Company or any other person or entity an easement, nor any property right or interest in Agency right-of-way, nor do they supersede more restrictive requirements of any other governmental agency.

Company shall apply for a permit from each appropriate Agency District office in which Company proposes to locate its facilities. Company shall provide detailed engineering plans depicting the proposed alignment locations. Company shall also provide detailed drawings and/or descriptions outlining the benefits to the State of Wyoming.

Agency reserves the right to suspend permits or withhold permit approvals for "non-compliance violations" as outlined in this Agreement. The permits to be issued under this Agreement are for facility installations within the Interstate right-of way. Permits for access along state highways shall be filed separately with the appropriate District offices.

#### 8. TERM OF AGREEMENT AND RIGHT-OF-WAY ENCROACHMENT PERMITS

This Agreement and all permits issued hereunder shall not expire unless it is terminated pursuant to these terms.

Other permits issued to Company prior to actual construction (e.g., for preliminary corridor surveys) or for changes beyond routine maintenance after construction, shall be effective for the dates listed on each individual permit, and shall not affect the term of this Agreement.

#### 9. TERMINATION

This Agreement, and/or any individual permit issued pursuant to this Agreement may be terminated at any time by mutual agreement of the parties. Upon termination of this Agreement by mutual agreement, all permits issued under this Agreement to Company and in effect at the time shall also terminate.

In addition, this Agreement or the permits issued pursuant to this Agreement may be terminated as follows:

- A. Permit Revocation by Agency for Highway Convenience  
Agency may revoke any individual permit within Agency's right-of-way for Agency's convenience in the operation of the highway system. In such event, Agency shall provide Company with written notice a minimum of six months prior to such termination. Agency shall work with Company to find a suitable replacement area on the Interstate right-of-way for company's facilities near the terminated location, where possible.
- B. By Agency for Non-Compliance  
Agency may, after notice and opportunity for cure as set forth below, terminate this Agreement or revoke individual permits if Company:

- i. Fails to comply with the material terms of this Agreement, or any material permit provisions.
- ii. Fails to comply with the Policy, Agency standards, or fails to take the proper action(s) required by Agency to correct Policy violations.
- iii. Violates federal, state, or local laws, codes, ordinances, licenses or permits applicable to the ownership, operation, or maintenance of the facility.
- iv. Interferes with Agency's operations.
- v. Operates in a manner that adversely affects public safety.

The items specified in i. - v. above shall hereinafter be referred to as "non-compliance violations." If public safety is threatened by such an action or there is a non-compliance violation that requires Company's prompt attention, Agency shall provide Company with an oral or facsimile notice, and Company shall immediately act to cure the violation. A subsequent written notice shall follow.

With other non-compliance violations, Agency shall provide Company with written notice and Company shall have up to 30 days to cure the violation, or start the cure, if by its nature, the condition cannot be cured within that time. Company may ask for an extension if the cure will take longer than 30 days and such extension will not be unreasonably withheld. With any non-compliance action, Agency may temporarily suspend any or all permit(s), shut down work in-progress, or withhold the approval of permit applications until Company takes action towards a cure to the satisfaction of Agency.

If a cure has not been affected for non-compliance violations in accordance with the terms of this Agreement, Company shall be provided with written notice of termination of the Agreement or applicable permit(s) for non-compliance violations. Company shall forfeit any prepaid fees, if applicable, as liquidated damages. Company's failure to comply with respect to an individual permit will not necessarily result in termination of all permits or termination of this Agreement.

In addition, Agency may require Company to do one of the following:

- i. Forfeit ownership to State of Wyoming all of Company's facilities located within the right-of-way at the location covered by the terminated Agreement or permit.
- ii. Remove all of Company's above ground facilities that adversely affect Agency's use of the right-of-way, except for those portions used by Agency, from the Interstate right-of-way if the entire Agreement is terminated, or only those facilities adversely affecting Agency's use of those portions of the right-of-way covered under a permit if only a permit is revoked. Such removal shall occur within 60 days of the notice, and Company shall return the right-of-way to an equal or better condition than what existed upon issuance of the permit (normal wear and tear

and casualty loss excepted). Removal and restoration shall be at Company's sole cost and expense.

Company shall not have any further obligation with respect to a right-of-way area if Agency exercises its option to keep the communications facilities in that area. If Agency notifies Company to remove its facilities that are adversely affecting Agency's use of the right-of-way, and Company fails to comply within 60 days of the notice, then Agency shall have the facilities removed and bill Company for the reasonable cost.

C. By Company for Commercial Reasons

Company may terminate this Agreement or any individual permit on 90 days written notice to Agency if:

- i. At any time during the term of this Agreement, it becomes commercially, economically, technologically, or legally inadvisable in Company's business judgment for it to utilize Agency's right-of-way,
- ii. All or a significant portion of Company's facilities are destroyed by a natural disaster, fire, war, or other calamity.
- iii. Any required certificate, permit, license or approval is denied, canceled or otherwise terminated for reasons beyond Company's control such that it is unable to use Agency's right-of-way for Company's intended purposes.

Upon Company's termination of this Agreement or any permit(s) for reasons listed above, Company shall forfeit any prepaid fees, if applicable, as liquidated damages, and shall do one of the following:

- (a) Sell the facilities in the Interstate right-of-way to another entity and give notice of such sale to Agency. The new entity shall be required to enter into a new Agreement with Agency upon mutually agreeable terms and conditions.
- (b) Remove all of its above ground facilities in the Interstate right-of-way within 60 days and return the right-of-way to an equal or better condition than what existed upon issuance of the permit(s) (normal wear and tear and casualty loss excepted) at Company's sole cost and expense.

10. UTILITY ACCOMMODATION POLICY

Unless otherwise specified in this Agreement or associated right-of-way permit, Agency's "Utility Accommodation Regulation" dated April 1990 shall govern all aspects of operations of Company's communication facilities. The Policy is amended from time to time by Agency. Facilities installed by Company prior to changes in the Policy shall not be required to comply with the amendments unless modifications to the facilities require a permit from Agency or are required by federal, state or local laws, codes or ordinances. Company acknowledges that it has received, read, and understands the Policy.

11. PRELIMINARY CORRIDOR SURVEYS

Company may perform preliminary corridor surveys to develop engineering plans, check environmental conditions, perform soil borings, etc. If Company elects to perform a corridor survey, it shall obtain a permit from the appropriate Agency District office(s) prior to doing any work.

12. PERMISSION FROM OTHER LANDOWNERS/AGENCIES

The parties recognize that Agency may not own in fee the entire Interstate corridor they are situated upon. Agency may be situated upon lands owned by entities such as the United States Forest Service, Bureau of Land Management, Railroads, Indian Tribal Lands or others by permit or easement. It is Company's responsibility to determine if any other permits are necessary and obtain them from the other entities.

If any permits are required from local jurisdictions whose highways cross over or under Agency's right-of-way, Company is responsible for determining ownership and obtaining permits even though Company facility is technically within Agency's right-of-way.

Company may be required to avoid or mitigate impacts to cultural, environmental, or historical sites. Company must, prior to commencing construction hereunder, obtain the necessary permission or permits from those owners or agencies having jurisdiction (Railroads, BLM, DEQ, Indian tribes, etc.) over the property over which the rights-of-way of the Interstate cross.

Company shall provide proof of all the above permits to Agency prior to obtaining Agency right-of-way encroachment permit (Form M-54). Only one Agency right-of-way encroachment permit per District shall be required for the initial construction. Company may not start work before receiving the final signed copy of the M-54 License from the District office.

13. OTHER UTILITIES

Subject to Agency approval, Company may be allowed to have other utilities installed in the right-of-way to serve its facilities. All such utilities shall first obtain a permit from Agency in order to occupy the right-of-way.

14. CONDITIONS OF ISSUING RIGHT-OF-WAY ENCROACHMENT PERMITS

Company and Agency agree to the following conditions in conjunction with Agency authorization of permits for facility installations within the right-of-way described in this Agreement and its attachments:

- A. Traffic control plans shall be submitted to Agency's District Traffic Engineer in each District Company is working in for approval prior to starting any work in the Interstate right-of-way.
- B. Company may be permitted, upon receipt of prior approval from Agency's State Bridge Engineer, to attach Company's facility to interstate bridges or structures along the defined route. Company agrees to reimburse Agency for all design work and any future additional maintenance or improvement costs incurred by Agency due to the attachment of the facility on Agency's bridges or structures.
- C. Company shall not be allowed to install regeneration sites or any above ground appurtenances or structures of any sort (other than route/locate marker warning signs) within the Interstate right-of-way.
- D. No service connections, with the exception of major hubs as shown on the map of the project, will be allowed to individual property owners adjacent to the corridor. Subject to Agency permit approval, Company shall have the right to exit and enter the right-of-way with lateral fiber optic facilities to make connections to its fiber optic cables for the purposes of extending Company's services to commercial structures adjacent to the right-of-way or for connecting to adjacent fiber optic transmission lines or for connecting to an adjacent fiber optic transmission line.
- E. Company shall obtain new permit approvals from Agency and other applicable governmental agencies and highway authorities, for the future installation of additional fiber to its existing conduits.

## 15. FACILITY OWNERSHIP

The facilities installed by Company on Agency right-of-way shall be Company's property from the date that construction begins and throughout the term of this Agreement. However, in consideration for the use of the right-of-way, it is highly desired that the Company allow for fiber connect points that benefit any state agency facility along proposed route. This could include buildings in close proximity of the proposed fiber route.

Company shall retain the right to grant an "indefeasible right of use" (IRU) to other companies to enable them to use Company's conduits or individual fibers.

Those customers that obtain communications services from Company, either through purchasing services or leasing lit fiber services are not required to obtain a permit from Agency.

Company may sell a portion of its facility (conduits or fibers) to another company, or grant an IRU for use of available spare fiber strands or one or more of Company's available spare conduits to another company for the purpose of installing its own fiber. In such an event, the requirement for Company to continue as a single point of contact for all operations remains in effect. Any new company with an Indefeasible Right to Use (IRU) shall also be required to obtain a new agreement including all applicable permits. Company shall notify Agency in

writing, a minimum of 30 days prior to the closing of such a transaction. Company shall provide Agency with documentation showing who is responsible for maintaining the utility in the case of an emergency or paying for any relocation work requested by Agency.

Upon request of Agency, Company shall submit an affidavit to verify the ownership of the facilities installed under this Agreement. The affidavit shall also include the names, addresses, and contact persons of any other companies that have an ownership interest in the facilities installed hereunder.

#### 16. FACILITY RELOCATION

If a highway project or other Agency approved use conflicts with the placement of Company's facilities installed hereunder, Company shall be given an opportunity to relocate its facility at Company's expense. Agency will not pay for any part of this relocation. Chapter XVIII of Agency's Rules and Regulations will not apply to Company.

Company may be denied access to Agency right-of-way at the time of relocation.

#### 17. FUTURE ACCOMMODATIONS

This Agreement does not provide Company exclusive use of Agency right-of-way for fiber optics facility installations. Agency may permit other utility installations adjacent to Company's facilities, and shall provide for a reasonable distance (5-foot minimum wherever possible) to be maintained from Company's facility to minimize potential conflicts, reduce the possibility of accidental damage, and still retain a corridor that could be utilized by other communication companies in the future. Agency will encourage other communications companies interested in locating facilities within the same corridor as Company to negotiate with Company over leasing part of its facility to minimize the disruptions to Agency's right-of-way.

Company agrees to sell/sublease excess capacity to other fiber optic purchasers/leases on a competitively neutral and nondiscriminatory basis. Company agrees to allow Agency or State of Wyoming to participate in arbitration process of fair market value if negotiations break down while Company is negotiating to sell/sublease any of its excess capacity to a competitive company. Upon request, the Company will provide market information based on its existing lease or IRU arrangements in this right-of-way to assist the Agency or State of Wyoming on a confidential basis in validating fair market value for this Interstate right-of-way. Any and all customer information submitted by the Company will be marked as "Confidential" and will be held as such by the Agency or the State of Wyoming.

#### 18. EMERGENCIES

Company may respond to any facility-related emergency without first obtaining a permit from Agency so long as it follows Agency District guidelines while handling the emergency. If

necessary, Company shall submit Agency Form M-21, Utility Service/Repair Permit Application, after the emergency response to its facilities.

## 19. ENVIRONMENTAL COMPLIANCE

Company shall comply with existing or hereinafter-enacted environmental laws or regulations that apply to or affect the operation of Company's facilities covered by this Agreement or any permit. Company shall not generate, store, or dispose of any hazardous substances nor transport those substances to or from the right-of-way. Company's facilities shall not constitute, contain, generate or release any hazardous substance, waste, pollutant, or contaminant as defined under federal, state, and local laws.

Company shall in the process of obtaining the permits hereunder, contact all appropriate and required agencies regarding the need for environmental permits and approvals for the installation of the facilities.

Company is responsible to obtain all necessary environmental permits or approvals from regulatory agencies with jurisdiction. Copies of those environmental approvals/permits shall be submitted to Agency prior to starting construction and included as a supplement to Agency permits.

In the event that Agency has an improvement project in the vicinity of Company's location(s), and has done an environmental review for that project at any time, Agency will furnish Company with that information upon request. Any information provided to Company shall be considered "for informational purposes only." No representation is made as to the accuracy or adequacy of the information for Company's purposes.

If Company discovers any environmental conditions on Agency right-of-way, which constitute potential violations of applicable regulations or other problems, either before, during, or after installation of its facilities, Company shall notify Agency in writing, to the appropriate District. Company shall not be responsible for the assessment, mitigation or remediation of pre-existing right-of-way environmental conditions unless Company's operation creates the environmental condition. When right-of-way remediation must be undertaken as a result of contamination created by Company, Company shall initiate, finance, and carry out an Agency approved remediation plan.

The obligations of Company set forth in this section shall survive the termination of this Agreement. However, if Company removes all of its facilities from a right-of-way area and completes the required restoration or is allowed by Agency to leave its underground facilities in place, and provides Agency with a survey from an environmental consultant licensed to do business in the State of Wyoming documenting that the area is free and clear from all Company generated contaminants, then this obligation shall be released in writing by Agency for that particular location.

20. INSTALLATION REQUIREMENTS

Company shall be responsible for obtaining all of the required approvals or permits from agencies outside of Agency before commencing any construction activity on Agency's right-of-way, and submitting evidence of those approvals or permits with each applicable permit application. Company shall complete construction of its facilities within 12 months of the issuance of the necessary construction permits. If Company fails to complete said construction, Agency shall have the option of revoking the permit and issuing a new one, or extending the time frame for completion. All installations shall follow the guidelines set forth in the Policy, except as specified in this Agreement or in any special permit provisions. Specifically:

A. Contact List/Scheduling

Company's name and contact number for a single point of contact for all construction concerns is:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Cell: \_\_\_\_\_

Email: \_\_\_\_\_

Company shall also provide Agency with the names, addresses, telephone numbers, and email addresses of the people in charge of its field operations, as well as other staff members who are assigned to the project and permanently stationed at Company's regional and corporate headquarters. This includes anyone responsible for the overall project, specific spreads, or directional boring crews. It also includes any subordinates or team leaders who may make key decisions, and any consultants or contractors who are hired by Company.

Field personnel shall have cellular phones that would enable an Agency representative to contact them at any time. Company shall provide Agency with the staff names and corresponding phone numbers no later than the pre-construction meeting, and shall update them as necessary within three (3) working days of a change.

Company shall also provide a weekly schedule of all field operations in Agency right-of-ways to the appropriate District where the work is taking place. The schedule shall be provided by noon every Monday, or the first working day of the week in case of a Monday holiday, and may be sent by email, carrier or regular mail. Specifically, the information provided shall include:

- i. Contractor name(s) and/or Company crew number (or other identifying feature).
- ii. Lead contact person in the field for each contractor or crew listed in #1.
- iii. Cell phone number of #2.
- iv. Contractors' main office phone numbers.
- v. Crew locations: County, highway, and terminus (milepost range, road crossing(s), or other identifying features).
- vi. Brief description of planned operation for the week: include planned work activities, stoppages, number of crews, etc.

If schedules are not received by noon, Agency may shut down the work operation within the district(s) involved.

B. Right-of-Way Access

Access to Agency's Interstate right-of-way shall be from adjacent lands, frontage roads, or crossing highways, and may be allowed from the shoulder of the highway under the strict provisions as outlined in this Agreement or its attachments. Agency does not authorize the use of any median crossover for any reason. Such activity is illegal and subject to a citation and fine.

Where approved by Agency and with the approval of FHWA, Company may temporarily remove a portion of Agency's access control line fence to gain access to the right-of-way. Company shall be responsible for effectively restricting access by others during the period when the fence is open. Overnight, the fence shall be restored, a locked gate installed, or some other way of securing the fence completely to keep people and animals out.

C. Hours of Operation/Work Restrictions

Company is authorized to work sunrise to sunset Monday through Saturday, except as restricted in this Agreement. No construction work shall take place during nighttime hours unless authorized by Agency. Emergency fiber repairs may take place during nighttime hours; however, the Company shall provide notice to the appropriate District office as soon as possible of such repair activity. The Company may schedule routine maintenance activities between the hours of 12am and 6am through submittal of an M-21 license application directed to the appropriate District office, the approval of which shall not be unreasonably withheld.

Company shall not work on any holidays recognized by the State of Wyoming unless in the act of making emergency repairs to its facilities. Company may obtain a list of these holidays from the District office. Company may submit a request to Agency to work during a holiday, however, Agency shall not be obligated to approve the request.

Agency may restrict work at any time for public safety.

D. Meetings

Agency and Company, along with its contractors and consultants, Highway Patrol, and all other interested parties shall hold at least three (3) meetings prior to the start of construction. These meetings shall be arranged by the Company and scheduled to occur at a suitable facility in Casper, WY: Pre-Staking, Pre-Bid, and Pre-Construction, to discuss the entire project and its corresponding timetable. No work shall begin prior to the pre-construction meeting. Agency representatives shall be invited to all other meetings where construction details are discussed.

E. Existing Agency Facilities

Company and its contractors shall notify each District office in writing, at least two (2) weeks prior to excavating on Agency right-of-way so that an Agency representative can come out to the site and mark Agency's facilities. Company shall be aware that Agency may not know where all of its facilities are located.

When crossing Agency facilities with Company's own facility, Company shall expose Agency's facility and determine its vertical location before commencing installation of Company's facility. Any Agency facility damaged by Company during construction shall be repaired by Company at Company cost. Company shall be responsible for any loss of service costs associated with this damage.

Any new radio frequency device shall be approved by Agency Telecommunications Program prior to permit approval.

Company will remove any facility interfering with Agency operations within three (3) days of being notified in writing of the interference. In cases of public safety, Agency may remove the facility immediately.

F. Existing Non-Agency Facilities

When crossing existing facilities with Company's own facility, Company shall expose the existing facility and determine its vertical location before commencing installation of Company's facility. Any existing facility damaged by Company during construction shall be repaired by Company at Company cost. Company shall be responsible for any loss of service costs associated with this damage.

G. As-Built Plans

Five hard copy sets of "as-built" plan sheets and electronic files fully and accurately translated into the Bentley .dgn format used by Agency showing the approved deviations and hand hole locations shall be sent to the appropriate District office within 60 days of completion of construction.

H. GIS Location Files

Company shall submit the geographic location of the placement of each line. This location shall be submitted in shape file format, referenced with proper geographic projection, and shall include line features representing the location of each asset. Vertices along the linear feature of the location shall be accurate to within five (5) meters.

- I. Work Area Protection During Non-Working Times  
Company shall store its equipment/materials off the right-of-way during non-work times, if possible. If necessary, Company may store its equipment/materials on the right-of-way provided they are placed as close to the right-of-way line as possible and outside of the clear zone. Company will not leave any open excavations in the right-of-way during non-work times.
  
- J. Erosion Control  
Company shall use best management practices and take all steps necessary to prevent soil from getting into nearby waterways, and shall protect excavated areas with the proper erosion control devices to contain the soil directly at the location. All necessary erosion control devices shall be in place prior to starting any construction.
  
- K. Right-of-Way Restoration  
Company shall restore any Agency right-of-way disturbed to its original (as best as practical) condition within two weeks after installing its facilities at that location. Upon notification from Agency, Company shall temporarily restore right-of-way up to 15 feet from the edge of shoulder one week prior to the scheduled date of mowing operations in the area. Time extensions for restoration may be allowed by Agency in the case of inclement weather, poor soil conditions, or if Company's operations would track over the same disturbed areas and provided that proper erosion control devices are in place to protect the disturbed areas.  
  
Special seed mixes may be required by Agency for surface restoration to prevent the establishment of non-native shrubs and grasses in the area. Company shall request from Agency a copy of the seed mixture required in each area prior to ordering any seed on the project. Company's contractors shall thoroughly wash all equipment before bringing it to the job site if such equipment was used in other states prior to being in Wyoming.  
  
If Company fails to do restoration within the required time period, Agency shall have the right-of-way restored, and Company will reimburse Agency for the costs of such restoration work.
  
- L. Above-Ground Facility Marking  
Company shall mark its facility with above ground markers at both sides of the Interstate right-of-way at crossings at 1,000 foot intervals or line of sight, whichever is shorter, and at critical locations such as road and culvert crossings. The markers should be designed to notify anyone in the vicinity of the facility as to its approximate location, but be small enough that they are not readable from the highway. Updated contact information should be on the marker.

21. MAINTENANCE AND OPERATIONS

Company name and contact number for a single point of contact for all repair, replacement, maintenance and operations concerns, shall be:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Cell: \_\_\_\_\_  
Email: \_\_\_\_\_

If there is a change in this contact person, Company will notify Agency in writing at least thirty (30) days prior to making the change. Company shall be responsible for all maintenance costs.

22. TAXES AND LIENS

Company shall promptly pay and discharge all taxes, assessments, fees and other charges leveled or assessed against its facilities situated on Agency right-of-way, and all special assessments, license fees, permits, area charges, occupancy taxes, and any and all other charges levied or assessed by reason of Company's use and occupancy of the right-of-way which become due during, or apply to the term covered by this Agreement, which are hereby declared the obligation of Company under this Agreement.

Company shall keep the right-of-way free from any liens arising from work performed, materials furnished or obligations incurred by Company. Company shall not permit the filing of a lien against any part of the right-of-way. Upon completion of any construction, copies of the signed lien waivers, if any, shall be supplied to Agency.

23. PAYMENT BOND

Company shall provide a payment bond under the Wyoming Little Miller Act in Title 54 Chapter 19, Wyoming Statutes in a form approved by Agency's legal counsel which bond shall be in effect during all construction activities performed hereunder. The penal sum of the payment bond will be the sum of five hundred thousand dollars (\$500,000.00). A surety authorized to do business in the State of Wyoming shall issue the payment bond. The payment bond shall be conditioned upon the payment of all indebtedness incurred for all subcontractors, labor, material, and supplies furnished for the project. The payment bond must be kept in full force for a period of six months following the date of completion of the construction on the project. In the event the surety or bonding company fails or becomes financially insolvent, Company shall file a new and sufficient bond meeting the requirements of this section.

24. BANKRUPTCY

If Company is declared bankrupt or becomes insolvent, or upon the appointment of a receiver, trustee or assignee for the benefit of its creditors, Agency reserves the right and sole discretion, subject to Company's right to assign its rights in and to this Agreement to any holder of a primary or secondary secured interest in the facilities which has provided construction financing for the facilities to Company, to cancel this Agreement at its option and without further cost, or to refund the Agreement and hold Company liable for all resulting damages. If this Agreement is canceled by Agency the terms of this Agreement pertaining to termination of the Agreement shall remain in full force and shall apply immediately at the time of bankruptcy.

25. GENERAL PROVISIONS

A. Amendments

Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

B. Applicable Law/Venue

The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties acknowledge and agree that this subsection does not waive, limit, or otherwise affect or reduce the full operation and effect of the provision in this Agreement relating to the State's and Agency's full retention of all rights of sovereign immunity.

C. Audit/Access to Records

Agency and any of its representatives shall have access to any books, documents, papers, and records of Company that are pertinent to this Agreement. Company shall, immediately upon receiving written instruction from Agency, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of Company that are pertinent to this Agreement. Company shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by Agency.

D. Compliance with Laws

Company shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

E. Entirety of Agreement

This Agreement, consisting of twenty (20) pages and its attachments (see following list) represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral:

- i. Form M-54, License consisting of five (5) pages

- ii. Exhibit A, Plan/Staking Sheets consisting of the pages stamped thereon
- iii. Form M-54A, District Stipulations consisting of the pages stamped thereon
- iv. Form M-54B, Fiber Optics Communications Facilities consisting of three (3) pages
- v. Form M-54B-1, Fiber Optics Communications Facilities Located in Interstate Right-of-Way consisting of five (5) pages
- vi. Form M-54C, Contractor Insurance consisting of one (1) page
- vii. Form M-54F, Specific Stipulations for Utility Services consisting of one (1) page

F. Ethics

Company shall comply with any and all ethical standards governing Company's profession, and any applicable statutes, rules, regulations or standards governing contracting with a state agency.

G. Indemnification

Company shall indemnify, defend and hold harmless the State, Agency, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Company's failure to perform any of Company's duties and obligations hereunder or in connection with the negligent performance of Company's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Company's malpractice.

H. Independent Contractor

Company shall function as an independent contractor for the purposes of this Agreement, and shall not be considered an employee of the State of Wyoming for any purpose. Company shall assume sole responsibility for any debts or liabilities that may be incurred by Company in fulfilling the terms of this Agreement, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing Company or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or Agency, or to incur any obligation of any kind on the behalf of the State of Wyoming or Agency. Company agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of Company or Company's agents and/or employees as a result of this Agreement.

I. Notices

All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail or delivery in person. Any change of address must be provided in writing to both parties.

- J. Notice and Approval of Proposed Sale or Transfer of Company  
Company shall provide Agency with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of Company. Such notice shall be provided in accordance with the notice provision of this Agreement.
- K. Prior Approval  
This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing and approved as to form by the Office of the Attorney General.
- L. Proof of Insurance  
Company shall provide to Agency proof of workers' compensation and unemployment coverage for all its employees who are to work on the project described in this Agreement. Certificates of good standing in each of the Wyoming Workers' Compensation and Unemployment Insurance programs shall serve as sufficient proof if Company is statutorily required to participate in those programs. If Company's coverage is under a program different from the coverage provided by the Wyoming Department of Employment, proof of coverage shall be satisfied in manner to be determined sufficient in the discretion of Agency.

Company shall not commence work under this Agreement until Company has obtained all the insurance required by Agency and Agency has approved such insurance. Approval of insurance by Agency shall not relieve or decrease the liability of Company. Company shall provide a Certificate of Insurance to Agency verifying each type of coverage required.

- i. Commercial General Liability Insurance  
Company shall provide coverage, during the entire term of the Agreement, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than one million dollars (\$1,000,000) per claimant and two million dollars (\$2,000,000) per occurrence.
- ii. Business Automobile Liability Insurance  
Company shall maintain, during the entire term of the Agreement, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) per occurrence.
- iii. Workers' Compensation or Employer's Liability Insurance  
Company shall provide proof of Workers' compensation coverage pursuant to the Wyoming Workers' Safety and Compensation program, if statutorily required, or such other workers' compensation insurance as appropriate. Company's insurance shall include "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per employee for each accident and disease.
- iv. Unemployment Insurance

The Contractor shall be duly registered with the Employment Security Commission, Unemployment Compensation Division. The Contractor shall supply an Official Notice of Unemployment Insurance Coverage for itself and on each and every subcontractor prior to beginning work under this Agreement.

- v. Payment of Premiums and Notice of Revocation  
All policies required under this Agreement shall be in effect for the duration of this Agreement and project. All policies shall be primary and not contributory. Company shall pay the premiums on all insurance certificates which must include a clause stating that the insurance may not be revoked, canceled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to Agency.
  
- vi. Agency May Insure for Company  
In case of the breach of any provision of this Section, Agency or the State may, at Agency's or State's option, purchase and maintain, at the expense of Company, such insurance in the name of Company, or subcontractor, as Agency or the State may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be found to be due or become due to Company under this Agreement.
  
- vii. Agency as Additional Insured  
All insurance policies required by this Agreement, except workers' compensation and unemployment compensation policies, shall name Agency and the State as an additional insured, and shall contain a waiver of subrogation against Agency and the State, its agents and employees. Company shall provide, upon request, a copy of an endorsement providing this coverage.
  
- viii. Agency/State of Wyoming Right to Reject  
The State reserves the right to reject a certificate of insurance if Company's insurance company is widely regarded in the insurance industry as financially unstable. This includes, but is not limited to, insurance companies with an "Omit" rating in the A.M. Best insurance rating guide.
  
- ix. Agency/State of Wyoming Right to Contact Insurer  
Agency and the State shall have the right to consult with Company's insurance agent for disclosure of relevant policy information. Relevant information includes, but is not limited to:
  - (a) Exclusions endorsed
  - (b) Claims in progress, which could significantly reduce the annual aggregate limit
  - (c) If the policy is a "claims made" policy instead of an "occurrence" form, the information provided shall include, but not necessarily be limited to:

- (1) Retroactive dates
- (2) Extended reporting periods or tails
- (3) Any applicable deductibles

M. Severability

Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

N. Sovereign Immunity

The State of Wyoming and Agency do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. 1-39-104(a) and all other applicable law.

O. Subcontracts

Company shall not enter into any subcontract for any of the work contemplated under this Agreement without prior written authorization of Agency.

P. Taxes

The Company shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

Q. Third Party Beneficiary Rights

The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

R. Time is of the Essence

Time is of the essence in all provisions of this Agreement.

S. Titles Not Controlling

Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

T. Waiver

No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties.

U. Workers' Compensation and Unemployment Insurance.

Company shall provide to Agency proof of workers' compensation and unemployment coverage for all its employees who are to work on the project described in this Agreement. Certificates of good standing in each of the Wyoming Workers'

Compensation and Unemployment Insurance programs shall serve as sufficient proof if Company is statutorily required to participate in those programs. If Company's coverage is under a program different from the coverage provided by the Wyoming Department of Employment, proof of coverage shall be satisfied in manner to be determined sufficient in the discretion of Agency.

26. SIGNATURES

The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this page.

COMPANY

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

AGENCY

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

\_\_\_\_\_

Date