

# IDAHO TRANSPORTATION DEPARTMENT



## SMALL WIRELESS FACILITIES

## NON-EXCLUSIVE INSTALLATION AND OCCUPANCY AGREEMENT

**MAY 2022**

Table of Contents

RECITALS ..... 3

AGREEMENT..... 4

    SECTION 1. DEFINITIONS..... 4

    SECTION 2. RIGHT TO USE ITD RIGHT-OF-WAY..... 5

    SECTION 2. TERM ..... 6

    SECTION 3. FEES AND RATES..... 6

    SECTION 4. RIGHT TO USE ONLY DESIGNATED ITD RIGHT-OF-WAY; COMPANY TO PAY ALL COSTS..... 7

    SECTION 5. PERMIT REQUIREMENTS ..... 7

    SECTION 6. MAINTENANCE AND REPAIR ..... 11

    SECTION 7. ADDITIONAL INFORMATION ..... 12

    SECTION 8. POWER METER AND UTILITY CONNECTIONS..... 12

    SECTION 9. RELEASE AND WAIVER; SECURITY ..... 12

    SECTION 10. INDEMNIFICATION ..... 12

    SECTION 11. INSURANCE..... 13

    SECTION 12. ACCOMMODATION OF ITD WORK..... 13

    SECTION 13. EMERGENCIES ..... 14

    SECTION 14. ENFORCEMENT, TERMINATION, ABANDONMENT AND REMOVAL..... 15

    SECTION 15. REQUIRED CONTACT INFORMATION AND NOTICES..... 18

    SECTION 16. ASSIGNMENT..... 19

    SECTION 17. GOVERNING LAW ..... 19

    SECTION 18. MISCELLANEOUS ..... 19

EXHIBIT A..... 21

## RECITALS

This NON-EXCLUSIVE INSTALLATION AND OCCUPANCY AGREEMENT (“Agreement”) is made and entered into by and between the Idaho Transportation Department (hereinafter “ITD”), an agency of the State of Idaho, whose principal office is located at 11331 W Chinden Blvd, Building 8, Boise, Idaho 83714 and Wireless Company Name, a company organized under the laws of the State of \_\_\_\_\_ (Company), whose principal office is located at \_\_\_\_\_. Each as party (“Party”) and together as parties, (“Parties”).

WHEREAS, ITD has jurisdiction over state highway rights-of-way within the State of Idaho; and

WHEREAS, the Company desires to install, place, mount, operate, modify, maintain, upgrade or replace Small Wireless Facilities on ITD owned or operated structures and may desire to construct Small Wireless Facility within ITD right-of-way; and

WHEREAS, ITD has the authority to enter into this Agreement pursuant to the provisions of Idaho Code 40-312(3) to control the highway right-of-way and is willing to allow the Small Wireless Facility installation in accordance with the terms and conditions contained herein; and

WHEREAS, both ITD and the Company desire to enter into an Agreement setting forth the terms and conditions for authorizing the use of specified rights-of-way for the purposes of installing, placing, mounting, operating, modifying, maintaining, upgrading, replacing, and removing Small Wireless Facilities; and

WHEREAS, the locations, size, period of use, fees, rates, type of equipment, and other specific terms and conditions with respect to each individual Small Wireless Facility location shall be described in a Permit as defined in Idaho Administrative Code (IDAPA) 39.03.43 for each location. The specific portion of the right-of-way that is considered an authorized installation site in the Permit shall be referred to in each case as the “Permitted Area”; and

WHEREAS, this Agreement and any subsequent Permit issued in connection with this Agreement shall only be used for and apply to Small Wireless Facilities as defined in Idaho Administrative Code (IDAPA) 39.03.43 – Rules Governing Utilities on State Highway Right-of-Way; and

WHEREAS, the Parties acknowledge that different related entities may operate or conduct the business of Company in different geographic areas and as a result, each applications and corresponding Permits and other documents may be signed by Company’s affiliated entities, as

appropriate based upon the entity holding the FCC license in the State of Idaho which shall include the entities listed on the attached Exhibit A.

## AGREEMENT

NOW, THEREFORE, on the stated recitals, which are incorporated by reference, and for good and valuable consideration, the Parties agree as follows:

### SECTION 1. DEFINITIONS

#### SMALL WIRELESS FACILITY:

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas as defined in 47 C.F.R. 1.1320 (d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. §1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under 47 C.F.R. § 17.4;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R §1.1307(b).

**COLLOCATION:** The installation, mounting, maintenance, modification, operation, or replacement of Small Wireless Facilities in public right-of-way, regardless of ownership.

**NEW STRUCTURE:** A new structure placed in the right of way for the primary purpose of supporting one or more Small Wireless Facility, and/or equipment to support a Small Wireless Facility.

DAY: calendar day unless otherwise specified.

## SECTION 2. RIGHT TO USE ITD RIGHT-OF-WAY

### 1) Non-Exclusive License

ITD grants a non-exclusive license to the Licensee to use the Permitted Area described in each separate permit issued by ITD for the purpose of installing, placing, mounting, operating, modifying, maintaining, upgrading, replacing, and removing a Small Wireless Facility. The Licensee shall strictly comply with this Agreement and Permits while performing work in the Permitted Area. This Agreement does not convey title, equitable or legal, in the highway right-of-way. The non-exclusive license is only for the limited purposes and time periods stated in this Agreement.

The right to use any ITD right-of-way and all other rights and privileges shall be subordinate to the rights of ITD for transportation purposes within the Permitted Area. The Company's right to install, place, mount, operate, modify, maintain, upgrade, and replace a Small Wireless Facility, or to remove a Small Wireless Facility, shall be subject to such rights as ITD may have to require the removal or relocation of any subject Small Wireless Facility at the sole expense of the Company.

The ITD rights-of-way shall remain subject to all prior and continuing regulatory and proprietary rights and powers of ITD to regulate, govern and use ITD rights-of-way, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect ITD rights-of-way.

ITD does not have deeded title to all right-of-way corridors comprising the highway system. Some segments of the highway system operated by ITD occupy property by easement. The Company must enter into agreements and/or meet requirements stipulated by the underlying fee owners of the right of way. In some cases, additional permits may be required by owners or agencies having jurisdiction over the rights of way the highway occupies.

Interstate rights-of-way shall not be eligible for installation of Small Wireless Facilities

### 2) Access. The Company may access the Permitted Area to install, place, mount, operate, modify, maintain, upgrade, inspect, remove and replace a Small Wireless

Facility in accordance with the Agreement and any Permits issued. Access to the Permitted Area shall comply with all permit requirements.

## SECTION 2. TERM

- 1) Term of Agreement. This Agreement is valid for a period of 10 years from the Effective Date of the Agreement subject to applicable requirements, with ITD and the Company having the option to renew the Agreement for additional periods of 10 years provided there is no basis for denial of an extension or termination. Company and ITD will collectively review the Agreement prior to the expiration of the current term. If the Parties agree to extend the expiration date of the Agreement, the Parties will amend the Agreement.
- 2) Term of Permit. Each individual Permit shall have a term of 10 years from each individual effective date. The effective date shall be the date the permit is issued by ITD. The Company shall operate and maintain each Small Wireless Facility subject to applicable requirements set forth in this Agreement, any terms, conditions, and limitations as specified on each individual Permit issued, and in compliance with applicable statutes, ordinances, regulations, and rules. At the end of the 10 year term, and if there is no basis for denial or termination, each individual Permit may be extended an additional 10 years.

## SECTION 3. FEES AND RATES

Per the Federal Communications Commission (FCC) Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133, (Sept. 26, 2018), the fee schedule is as follows:

- a. \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facilities beyond five; or
- b. \$1,000 for non-recurring fees for a new pole (i.e. not a collocation) intended to support one or more Small Wireless Facilities; and
- c. \$270 per Small Wireless Facility per year for all recurring fees, including any possible Right-of-Way access fee or fee for attachment to structures in the Right-of-Way.

Payment shall be due and payable in advance on each Permit issuance date and shall be prorated for the number of months remaining until June 30 of the year, thereafter the annual rate for each Permitted Area shall be due and payable in full and in advance of July 1 of each year. Company shall make all payments to ITD based

on instructions provided with the annual billing statement. Failure to pay annual attachment and right-of-way access fee will result in the cancellation of the permitted facility and removal of Small Wireless Facility at the expense of the company. ITD reserves the right to adjust fee schedule structures based on governing guidance from the FCC or FHWA, as amended, or on an agreement renewal cycle.

Costs paid for a permit application will be forfeited in the event the permit is denied. Resubmittal of an application to address the reasons for denial will be considered a new permit and the full costs associated with a new permit application will apply.

#### SECTION 4. RIGHT TO USE ONLY DESIGNATED ITD RIGHT-OF-WAY; COMPANY TO PAY ALL COSTS

- 1) Right to Use Only ITD Right-of-Way. This Agreement shall not be construed to permit installation, placement, mounting, operating, modifying, maintaining, upgrading, inspecting, removing or replacing a Small Wireless Facility on any right-of-way other than the Small Wireless Facility within the Permitted Area described in each issued Permit.
- 2) All Costs Paid by the Company. The Company shall pay all taxes, fees, costs, and expenses necessary to install, place, mount, operate, modify, maintain, upgrade, inspect, remove or replace each Small Wireless Facility and all infrastructure necessary for the operation and maintenance of each Small Wireless Facility.
- 3) The Company is solely responsible for ensuring any Small Wireless Facility, pole, structure or other device is physically located, in its entirety, on ITD right-of-way within the Permitted Area, and not encroaching on adjoining property. ITD is not responsible for determining definitive right-of-way limits or associated geospatial characteristics. Permit approval does not absolve the Company from identifying the correct location should a Small Wireless Facility, pole, structure, or other device be unintentionally or intentionally placed outside of the Permitted Area. The Company shall obtain a professional land survey to determine the exact location of the Permitted Area.

#### SECTION 5. PERMIT REQUIREMENTS

- 1) With a fully executed Agreement, the Company is eligible to apply for Small Wireless Facility Permits. In addition to this Agreement, the Company shall comply with all the terms, conditions, and limitations described in each Permit.
- 2) The Company acknowledges and accepts full responsibility for securing and maintaining all licenses and permits, including the Idaho business license, as applicable and required

by law, to engage in business and provide the goods and/or services to be acquired under the terms of this Agreement.

- 3) Participation in Dig Line is required to provide location information for all underground facilities, pursuant to Idaho Code 55-2206, Underground Facility Damage Prevention.
- 4) Prior to the execution of any Permit, ITD shall have the right to review and approve all plans and specifications. ITD shall also have the right to inspect every Small Wireless Facility at any time during and after installation. The Company shall not commence installation or alteration of any Small Wireless Facility, or any portion thereof, until ITD has issued the Permit and the Company has paid the applicable rates and fees. Approval of plans, specifications, and Permits shall not release the Company from the responsibility for, or the correction of, errors, omissions or other mistakes that may be contained in the plans, specifications, and/or Permits. The Company shall be responsible for notifying ITD and all other relevant parties immediately upon discovery of such omissions and/or errors.
- 5) Each Small Wireless Facility will be constructed and operational for use by the Company within **180** days after ITD issues a Permit. The Company shall provide ITD documentation of the completed construction and operation use within 30 days after each Small Wireless Facility is operational. Failure to meet requirements in this area are grounds for Permit and Agreement termination. Any Small Wireless Facility installed and operated in any Permitted Area shall meet the requirements of all applicable laws and regulations for the operation of such facilities.  
The Company shall provide ITD as-builts of the constructed Small Wireless Facilities. Due to the limited nature of the right-of-way and the importance of using the right-of-way for transportation purposes, speculation is prohibited. An application will not be approved for any structure that will not provide service upon completion of construction or 180 days after ITD issues a Permit.
- 6) The Company is required to apply for additional encroachment Permit for routine maintenance or for replacement of a Small Wireless Facility with one that is substantially similar or smaller in size, or the work requires excavation or closing of sidewalks or vehicular lanes in a public right-of-way, an encroachment permit is required. Use Form 2118.
- 7) Permit Applications.
  - a) Timeframes: ITD will review Permit applications for collocation installations within 60 days of receiving an application. ITD will review Permit applications for new, modified or replacement structures within 90 days of receiving an application. ITD will determine if an application is complete within 10 days of receipt of the original application package. If the application is incomplete, ITD shall notify the Company and specify what information is needed to

complete the application. ITD shall have 60 days from the receipt of the revised application for collocation and 90 days for new, modified or replacement structures, to review the completed application. Within 10 days of receipt of the revised application, ITD will notify the Company of any requested information that has not been provided. If the Company fails to respond to any request for required information to provide a complete application within 30 days of notice, the application shall expire. If the Company fails to provide a complete application addressing the deficiencies identified by ITD with the second resubmittal, the application shall expire. ITD has the right to request supplemental information throughout the review process. However, if missing information is identified after the initial 10 day notification period, the review clock will pause pending supplemental information, and the review clock will resume, not restart, once a revised permit has been received.

- b) ITD may deny an application if the Small Wireless Facility materially interferes with the safe operations of traffic control equipment; interferes with a sightline or a clear zone for transportation or pedestrians; interferes with ADA compliance; does not comply with applicable laws or legal obligations; interferes with other permitted uses; creates a public health or safety hazard; or obstructs or hinders usual travel or public safety of the right-of-way. The permit application for each site shall specifically identify all features at the site and demonstrate how the proposed Small Wireless Facility does not interfere with any other features or operation of the transportation function. This demonstration shall include an evaluation of Radio Frequency (RF) transmissions impacts on existing communication equipment. This evaluation shall also evaluate cumulative RF transmissions to reflect the addition of the proposed new equipment when placed in addition to existing equipment. The Company shall be responsible for identifying all existing facilities that could be impacted and providing documentation that the owner of the facility has reviewed the proposed installation and determined no detrimental effect on their operation. This verification must be submitted with the permit application for each individual site. Note, full ADA compliance must be maintained, allowed variances for necessary transportation related facilities will not apply.
- c) The terms, conditions and obligations in this Agreement shall be incorporated into each Permit. The failure to comply with the terms and conditions in the Permit and this Agreement shall be grounds to revoke or

suspend Permits and this Agreement, including not renewing the Agreement or Permits.

- 7) Structural Load Analysis. The Permit application shall include a load analysis using the current edition of the American Association of State Highway and Transportation Officials (AASHTO) Load and Resistance Factor Design Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals indicating that the structure on which the Small Wireless Facility will be mounted will safely support the load. When using an existing facility, the analysis shall include an evaluation of the current condition and loads on the structure. The analysis will be stamped by a Professional Engineer licensed in the State of Idaho. The calculations shall include an evaluation of the structural integrity of the attachment methodology to ensure all attachments are adequate. If an ITD owned pole is proposed for the Small Wireless Facility and it cannot support the proposed load, the Company may propose to replace the structure, at the sole cost of the Company, with a structure that can carry the proposed load and provide the full function of the current structure for ITD facilities. Replacement structures will be subject to ITD concurrence that ITD functionality is adequately addressed. The Company shall be responsible for the cost differential of the pole required for ITD services and the pole required to support the Small Wireless Facility for any future replacement of the pole, for any reason.
- 8) Height. A new or modified structure with Small Wireless Facilities shall not exceed fifty (50) feet above the ground level. All antennas may not extend more than ten (10) feet above the top of an existing structure and shall be a minimum of twenty (20) feet above the adjacent ground surface.
- 9) Antenna installations including all associated elements and required hardware, shall not exceed three cubic feet in size. Cabinets required to contain equipment to support the Small Wireless Facility shall not exceed 28 cubic feet in size. Cabinets shall not be mounted on poles, but shall be either placed on a foundation that is flush with the surrounding ground, or placed in a below ground vault that extends above the adjacent ground no more than six inches. Buried vaults are required where equipment cannot be located outside the established clear zone or on designated scenic byway routes as required by ITD's Small Wireless Facility Infrastructure in Public Right-of-Way Design Guidelines.
- 10) Encroachment Permits. Company shall obtain an encroachment permit for any subsequent work within the highway right-of-way, in compliance with IDAPA 39-03-43 that involves excavation or takes a lane of vehicle travel or closes pedestrian facilities.
- 11) Any new structure or support equipment proposed within the right-of-way must be located outside the clear zone, placed behind existing barrier or be designed to meet

current approved break away features. New barrier to protect the proposed structure or equipment will not be allowed.

- 12) The Company shall provide 10 days' notice to ITD prior to beginning any work within the right-of-way. All work shall comply with the permit requirements and the Idaho Department of Transportation Standard Specifications in place at the time of permit issuance.
- 13) Upon completion and final inspection by ITD, the Company shall provide complete and accurate As-Built drawings to include all features installed in the right-of-way. The As-Built drawings will include, to the nearest 0.10 feet, all longitudinal, horizontal and vertical dimensions. All cellular, fiber optic and supporting utility infrastructure placed under this NON-EXCLUSIVE INSTALLATION AND OCCUPANCY AGREEMENT through the utility encroachment permitting process shall be delivered to ITD in Esri File Geodatabase Feature Class format. All GIS data must be projected to ITD's standard projected coordinate system, NAD 1983 Idaho Transverse Mercator (Meters), WKID 102605 (Authority: Esri). All latitude/longitude fields in GIS datasets must be calculated to WGS84 geographic coordinate system using numeric decimal degrees (not N/S/E/W).
- 14) Failure to provide complete As-Built drawings within 30 days of completion of the work will be considered default of this agreement and the permit will become invalid and the undocumented installation shall be removed. Future permit applications submitted under this agreement will not be accepted

## SECTION 6. MAINTENANCE AND REPAIR

- 1) The Company shall obtain an encroachment permit, ITD Form 2118, for its future maintenance of the Small Wireless Facility from ITD prior to commencing any activities that may impact the traveling public or clear zone, and may require temporary traffic control devices to be installed.
- 2) The Company shall pay for all damage to the right-of-way and highway appurtenances caused by the Company's installation, placement, mounting, operation, modification, maintenance, upgrading, inspection, removal or replacement of a Small Wireless Facility. If ITD repairs the damage to the right-of-way, including highway appurtenances, the Company shall reimburse ITD within 30 days from the date of the invoice.
- 3) The Company shall keep each Permitted Area clean and in good working condition. The Company shall develop and operate a proactive site inspection process to inspect all installed Small Wireless Facilities at whatever frequency is needed to keep its facilities free from nuisances such as litter, debris, graffiti, or other acts of vandalism. Site inspection records must be made available to ITD upon request.
- 4) In the event that a structure owned and operated by ITD that has a Small Wireless Facility attached to it is damaged or taken out of service, ITD will advise the Company of

the event within 24 hours of becoming aware of the issue. ITD will advise of the schedule for repair or replacement of the structure. ITD will be under no obligation to prioritize the repair or replacement due to the presence of the Small Wireless Facility. ITD will not be responsible for any loss or damage to the Small Wireless Facility equipment as a result of damage to ITD facilities by a third party or acts of nature.

## SECTION 7. ADDITIONAL INFORMATION

The Company shall make information regarding the equipment listed on each Permit or otherwise used in the operation of the Small Wireless Facility available to ITD, including, without limitation, information regarding FCC approvals, power consumption, signal output, signal strength, effective radiated power and RF power output. The Company shall deliver such information within 30 days after written request by ITD. ITD may request that such information be delivered in a summary fashion and/or delivered in a readable electronic format.

## SECTION 8. POWER METER AND UTILITY CONNECTIONS

The Company shall be solely responsible for ensuring that each Permitted Area has adequate electrical power and any other utility service necessary for the operation of a Small Wireless Facility. Use of utilities supporting ITD facilities will not be allowed. The Company shall enter into separate agreements for services to the Permitted facility. If meters are required, meter locations, size and installation methods shall be submitted with the Permit application and shown on the As-built plans.

## SECTION 9. RELEASE AND WAIVER; SECURITY

- 1) Release and Waiver. The Company hereby waives any claim and right of recovery from and releases the State of Idaho, ITD, its agents, officers, employees or contractors from any and all claims, liabilities, losses, damages or loss of property or revenue from any cause whatsoever to any Small Wireless Facility, specifically including, without limitation, damage, if any, resulting from ITD's maintenance operations adjacent to any Small Wireless Facility or from vandalism or unauthorized use of any Small Wireless Facility, except as such damage is caused by the negligence or willful misconduct of ITD, its agents, officers, employees or contractors during the course of performing their official duties. Company is not entitled to any consequential damages.
- 2) Security. The Company shall take reasonable precautions to secure any Small Wireless Facility against damage or unauthorized use.

## SECTION 10. INDEMNIFICATION

- 1) The Company shall indemnify and save harmless the State of Idaho and its agencies including but not limited to ITD, its offices, agents, employees, consultants, assigns, servants and the like from any suits, actions or claims of any character, whatsoever,

brought because of any injuries or damage received or sustained by any persons or property on account of the work of the Company, its officers, agents, employees, assigns, independent contractors, or the like, undertaken within the scope of this Agreement.

- 2) Should the Company chose to hire a contractor to complete the work, the Company shall cause to have its contractors indemnify and save harmless the State of Idaho and its agencies including, but not limited to, ITD, its offices, agents, employees, assigns, consultants, servants and the like from all suits, actions or claims of any character, whatsoever , brought because of any injuries or damage received or sustained by any persons or property on account of the work of the Company's Contractor, its officers, agents, employees, assigns, independent contractors, or the like, undertaken within the scope of this Agreement.

This Section 10 shall survive the expiration or termination of this Agreement or any Permit.

## SECTION 11. INSURANCE

- 1) The Company shall be adequately insured with policies written to include Commercial General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Company and the Company's contractors under this Agreement. The Company shall obtain the following insurance with ITD named as an additional insured: Commercial General Liability - \$2,000,000 per occurrence/\$4,000,000 per aggregate.
- 2) For each Small Wireless Facility approved within a Permitted Area, the Company shall deposit with ITD, on or before the effective date of the applicable Permit, certificates of insurance and the required endorsements in forms reasonably satisfactory to ITD, indicating compliance with the insurance provisions of this Agreement. The Company shall keep the insurance in effect during the term of each Permit and as the same may be extended. The Company will provide proof of continuing coverage at the request of ITD, within 10 days of a written request being made.

## SECTION 12. ACCOMMODATION OF ITD WORK

- 1) The Company shall be responsible for all costs associated with relocation, temporary or permanent, protecting in place or other modifications to Small Wireless Facilities resulting from ITD projects within the right-of-way for transportation purposes, including maintenance, replacement or expansion of facilities. Relocation within the right-of-way will be accommodated only when space is reasonably available for such relocation.

- 2) The Company shall pay ITD for any ITD project related delay claims, including consequential damages, for failing to timely remove or relocate any Small Wireless Facilities permitted to the Company.
- 3) The Company shall remove its Small Wireless Facility and associated appurtenances within 90 days from the date of written notice unless ITD agrees in writing for a longer period.
- 4) De-Energize Facility Response Requirement. When ITD conducts construction, maintenance, repair or replacement of ITD owned equipment within 30 feet of a Small Wireless Facility, the Company shall de-energize, deactivate, or otherwise turn off the Small Wireless Facility within 1 hour of being notified, until all necessary work is complete and positive notice of completion is provided to the Company by ITD. To the extent that the Company is unable to comply within the required timeframe, then ITD may de-energize, deactivate, or otherwise turn off the Company's Small Wireless Facility. In the event of non-response by the Company, ITD, at its sole discretion, has the right to bill for actual expenses incurred until such time that the Company resolves the situation.

### SECTION 13. EMERGENCIES

- 1) Emergency Work. Emergency Work is defined as work required to prevent loss of life or significant damage to persons and/or property. In all Emergency Work situations, the Company shall contact ITD immediately. On the first business day after commencing the Emergency Work, the Company shall contact the appropriate ITD District Permitting Office to complete a formal permit process.
- 2) Onsite Response Requirement. The Company shall respond to situations deemed by ITD to be an emergency immediately and shall have a response team present onsite within 3 hours of being notified by ITD via the Company's emergency contact as posted on the Small Wireless Facility, with all personnel, equipment and materials necessary to remediate the situation and otherwise make it safe to first responders and the traveling public. To the extent that the Company is unable comply, then ITD may take all reasonable action in connection with the Company's Small Wireless Facility necessary to remediate the situation and make it safe for first responders and the traveling public. In the event of non-response by the Company, ITD, at its sole discretion, has the right to bill for actual expenses incurred to keep the traveled way safe until such time as the Company resolves the situation.

## SECTION 14. ENFORCEMENT, TERMINATION, ABANDONMENT AND REMOVAL

- 1) Enforcement. ITD is responsible for enforcing and administering this Agreement and ITD is authorized to give any notice required by law or under this Agreement or Permit. Failure of ITD to require performance of any terms in this Agreement or the waiver by either Party of breach hereof shall not prevent subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach. ITD may terminate or suspend any Permit, withhold issuing any new Permits or encroachment permits to the violating Party, or terminate the Agreement for the failure of the Company to cure any default within the time period described in this Agreement.
  - a) ITD may suspend or revoke a Permit for:
    - i. Any violation of a condition of the Permit, encroachment permit, rule, statute, or Agreement; or
    - ii. The existence of any condition or performing any act that may cause a condition creating a safety issue or endangering health or property
    - iii. Changes to ITD facilities that no longer accommodate the installation
  - b) This Agreement does not affect ITD's ability to enforce any illegal encroachment.
- 2) ITD shall have the right to terminate this Agreement or individual Permit(s) as follows:
  - a) ITD Termination of Agreement
    - i) ITD may, in addition to seeking other remedy available, terminate this Agreement if the Company neglects or refuses to comply with any of the provisions of this Agreement and fails within 30 days after written notice from ITD to correct such neglect, refusal or default. With the exception of relocation work due to ITD projects, the Company shall have an extended period as may be required beyond 30 day, based on a written request from the Company and with written approval from ITD, if the nature of the cure is such that it reasonably requires more than 30 days and the Company promptly commences the cure within the first 30 day period and thereafter continuously and diligently pursues the cure to completion.

- ii) ITD shall terminate this Agreement if the Company fails to maintain or procure the insurance policy(ies) required by this Agreement. Such termination shall be effective 10 business days after delivery of written notice to the Company of such failure.
- iii) Upon termination of the Agreement, neither Party will owe any further obligations to the other under this Agreement, except for the responsibility of the Company to remove the Small Wireless Facilities from the Permitted Area within 30 days of such termination, to pay any fees or rates associated with the Company's use of the Permitted Area for the time period during which the Small Wireless Facility was installed, the indemnities and hold harmless provisions contained in this Agreement, and the Company's obligation to reimburse ITD for all costs, expenses and losses properly incurred by ITD. In the event of revocation of this Agreement, ITD may take any action authorized by law, including but not limited to, removal of the assets or legal action to force the removal of the Company's assets with the Company being responsible for the cost of the removal of the Small Wireless Facility and associated appurtenances.

This Agreement does not place any limitation upon ITD's right to pursue any other legal or equitable remedy available to it for breach of this Agreement.

- 3) ITD Termination of Individual Permits shall occur:
- a) Immediately after written notice if the Company fails to pay an annual attachment and right-of-way access fee or other monies due under any Permit after the same are due, and such failure continues for 30 days after receipt of initial written notice to the Company.
  - b) Immediately after written notice if the Company fails to cure a breach of a Permit or associated term, condition, or limitation within 30 days after ITD has notified the Company of such breach.
  - c) Immediately after written notice if the Company's operation of the subject Small Wireless Facility is deemed by ITD to endanger or pose a threat to the public health, safety or welfare or interferes with the normal day-to-day operation of any ITD operation or transportation

purpose. The Company, at its cost, shall immediately remove the Small Wireless Facility upon termination.

- d) After 90 days written notice, if the Permitted Area or right-of-way on which the Small Wireless Facility is located is needed for transportation purposes.
- 4) Removal of Small Wireless Facilities Upon Expiration or Termination
- a) Expiration of Agreement. Upon Expiration of this Agreement, the Company shall at its sole expense remove all Small Wireless Facilities and repair and restore all Permitted Areas to substantially the same condition prior to the installation of the Small Wireless Facilities within 30 days.
  - b) Expiration of Permit. Upon Expiration of this Agreement, the Company shall at its sole expense remove the applicable Small Wireless Facility and repair and restore the Permitted Area to substantially the same condition prior to the installation of the Small Wireless Facilities within 30 days.
  - c) Termination of this Agreement. The termination of this Agreement shall automatically result in the termination of each Permit and the Company shall at its sole expense remove each applicable Small Wireless Facility and repair and restore the affected areas of each Permitted Area to substantially the same condition prior to the installation of the Small Wireless Facilities no later than 30 days after notice of termination. The Company shall pay for all the fees and rates up to the date the Small Wireless Facilities are removed.
  - d) Termination of Permit. The Company shall at its sole expense remove the applicable Small Wireless Facility and repair and restore the affected areas of the Permitted Area to substantially the same condition prior to the installation of the Small Wireless Facilities no later than 30 days after notice of termination. The Company shall pay for all the fees and rates up to the date the Small Wireless Facilities are removed.
- 5) Abandonment of Small Wireless Facilities
- a) In the event the use of a Small Wireless Facility is discontinued for a continuous period of 12 months, the Company shall be deemed to have abandoned such Small Wireless Facility.
  - b) If any Small Wireless Facility is deemed abandoned, the Company shall remove its Small Wireless Facilities and structures within 30 days of ITD notice of such abandonment and shall repair and restore the right-of-way to a substantially similar conditions than at the time of the installation. Failure to do so may result in ITD removal of the Small Wireless Facilities and structures at the Company's cost. ITD shall have the right to inspect and

approve the condition of the right-of-way, Small Wireless Facilities, and structures prior to and after removal. The liability, indemnity and insurance provisions and any security required of a Company shall continue in full force and effect during the period of removal and until full compliance by the Company with the terms and conditions of this Agreement.

- c) The Company is required to notify ITD of the abandoned Small Wireless Facility. If the Company does not notify ITD, ITD may also send written notice to the last known address for the Company to notify the Company that the Small Wireless Facility appears to be abandoned. If the Small Wireless Facility is not abandoned, the Company must notify ITD within 45 days from the date of the notice that the Small Wireless Facility is not abandoned and provide supporting documentation to show the structure's use in the last 12 months. ITD may consider the Small Wireless Facility abandoned if the Company does not respond within 45 days from the date of the notice or the Company is unable to document the use of the Small Wireless Facility.

## SECTION 15. REQUIRED CONTACT INFORMATION AND NOTICES

- 1) The Company shall place and permanently maintain in place, a sign showing the current owner of the Small Wireless Facility Support Structure, the current owner(s) of, or parties responsible for, the equipment attached to the structure at this location, and updated 24 hour emergency contact information for all parties. The sign shall be attached opposite of the traffic-facing side of the structure. It shall also meet minimum retroreflectivity levels contained in the Idaho Manual on Uniform Traffic Control Devices. This sign shall be provided in addition to any signage required by other authorities having jurisdiction. Any such posting shall be devoid of all business-specific logos that may be construed as marketing or advertising.
- 2) The Company's 24 hour emergency contact information is required to be kept current and posted on the Small Wireless Facility as listed below:
  - Name:
  - Phone:
  - Email
  - Secondary Phone
  - Secondary Email
  - With a copy to:
- 3) Any written notice under this Agreement shall be directed to :

For Company:

Name:

Address

Email

For ITD:

The Idaho Transportation Department

Attn:

Address

Email

With a copy to:

Contact information may be changed upon written notification from either Party. All subsequent correspondence will be sent to the revised contact provided in the notification.

## SECTION 16. ASSIGNMENT

This Agreement is non-assignable and non-transferable without the express written consent of ITD, which consent shall be withheld if a proposed assignee or transferee cannot reasonably demonstrate the financial, technical, organizational and managerial resources needed to operate in ITD's rights-of-way at all times to protect the public health, safety and welfare.

## SECTION 17. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Idaho, including but not limited to the Idaho Tort Claims Act, and the Company agrees to the jurisdiction and venue of a competent court with the State of Idaho.

## SECTION 18. MISCELLANEOUS

- 1) When duly executed, this Agreement shall be binding upon the Parties hereto and their successors and assigns.
- 2) This Agreement may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument, and that facsimile or pdf signatures shall be deemed original signatures.
- 3) Each person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.
- 4) This Agreement and any Permits embodies and constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and

supersedes any prior oral or written agreements between the Parties with respect to the transaction contemplated hereby.

- 5) It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions, herein set forth and that no modification of this Agreement and no waiver of any of its terms and/or conditions shall be effective unless made in writing and duly executed by the Parties hereto.
- 6) This Agreement may not be altered, changed, or amended except by an instrument in writing, executed by the Parties.
- 7) Written Notice as used in this Agreement includes email notification.
- 8) Nothing in this Agreement affects or limits ITD's ability to enforce any violation concerning the use of the right-of-way according to applicable statute or rule.
- 9) It is acknowledged that this Agreement grants a permissive use of the right-of-way. The Company further acknowledges and agrees that it specifically assumes the risk that the Agreement or any individual Permit may not be in effect for a period sufficient for the Company to recognize the economic benefit of funds expended pursuant to and in connection with this Agreement or any individual Permit.

**IN WITNESS WHEREOF**, the parties have each executed this Non-Exclusive Installation and Occupancy Agreement as of the date first set forth above.

Idaho Transportation Department

Company

\_\_\_\_\_  
Blake Rindlisbacher, P.E.

\_\_\_\_\_  
Name

ITD Chief Engineer

Title

Company

## EXHIBIT A

WHEREAS, the Parties acknowledge that different related entities may operate or conduct the business of Company in different geographic areas and as a result, each applications and corresponding Permits and other documents may be signed by Company's affiliated entities, as appropriate based upon the entity holding the FCC license in the State of Idaho which shall include the entities listed below.