MONTANA
Department of Transportation

Christopher Dorrington, Director

2701 Prospect ▪ PO Box 201001
Helena MT 59620-1001

DISCLAIMER: THIS SAMPLE RIGHT-OF-WAY USE AGREEMENT IS FOR ILLUSTRATIVE PURPOSES ONLY. ALL PROVISIONS OF ANY ACTUAL AGREEMENT ARE SUBJECT TO NEGOTIATION BETWEEN THE PARTIES.

INTERSTATE ELIGIBLE PROJECT RIGHT-OF-WAY USE AGREEMENT

NON-EXCLUSIVE LEASE
Between
MONTANA DEPARTMENT OF TRANSPORTATION
And
Insert Full Legal Company Name of Facility Owner

This Interstate Eligible Project Right-of-Way Use Agreement is a Non-Exclusive Lease Agreement (Non-Exclusive Lease) and is made and entered into by and between **Insert Full Legal Company Name of Facility Owner**, Insert Company Address and the **Montana Department of Transportation (MDT)**, a department of the State of Montana, P.O. Box 201001, Helena MT 59620-1001, together referred to as "The Parties."

1. PURPOSE OF NON-EXCLUSIVE LEASE

The purpose of this Non-Exclusive Lease is to set forth the terms and conditions by which the Facility Owner shall be allowed to locate Eligible Project facilities longitudinally within defined segments of MDT's Interstate right-of-way. Facility Owner understands that this is a Non-Exclusive Lease, and that Facility Owner cannot exclude MDT, its employees or agents, or other facility owners authorized by MDT from entering and using the same segments of MDT's Interstate right-of-way.

2. NON-EXCLUSIVE LEASE & ASSOCIATED UPAS PERMIT DOCUMENTS

This Non-Exclusive Lease Agreement and Attachment A (MDT's Non-Discrimination Notice) are incorporated into and made an integral part of the associated Utility Permitting Administration System (UPAS) Permits and together set forth the terms by which MDT will allow the Facility Owner the necessary permission to construct and install, operate, maintain, repair, and replace an Eligible Project within MDT's Interstate right-of-way. This Non-Exclusive Lease is explicitly subject and subordinate to the rights and title of MDT and the State of Montana.

3. DEFINITIONS

For purposes of this Non-Exclusive Lease the following definitions shall apply:

A. District(s) - the MDT district(s) where the Eligible Project is/are located.

B. Eligible Project - A pipeline, fiber optic or other communications-type cables, wireless facility, associated infrastructure, and dedicated power sources.

C. Facility Owner – [Insert Full Legal Company Name]and its employees, agents, representatives, contractors and subcontractors.

D. Operations - The Facility Owner's construction and installation, operation, maintenance, repair, and replacement of an Eligible Project.

E. UPAS Permits – The UPAS Interstate Permit(s) associated with this Non-Exclusive Lease, including but not limited to any UPAS Notification Permits required for maintenance.

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F. Utility Manual – MDT's Right-of-Way Utility Manual containing technical and other requirements for MDT Interstate right-of-way Eligible Projects.

4. TERM

The term of this Non-Exclusive Lease shall be Insert Number of Years years. After the initial term, this Non-Exclusive Lease may be renewed upon mutual agreement of the parties.

5. CONSIDERATION.

Facility Owner shall pay MDT Insert Payment Option and Total Lease Payment if Applicable for the use of Enter Miles miles of MDT Interstate right-of-way as set forth in the UPAS Permits.

UPAS Permit applications require the payment of additional fees that are independent of the consideration for this Non-Exclusive Lease.

Optional Language 1
Facility Owner has applied for and has been granted a Federal Highway Administration (FHWA) exception to paying fair market value and no compensation is due.

Optional Language 2
Facility Owner agrees to pay MDT $100 per mile per year wherever the Eligible Project is located within the MDT Interstate right-of-way. Once Facility Owner submits its "as built" plans, MDT will determine whether there is any difference in actual miles occupied that requires additional compensation due to MDT or an overpayment warranting a refund from MDT. MDT will issue an invoice to Facility Owner and such additional compensation or refund must be paid within thirty (30) days of the date on MDT's invoice. Facility Owner's lease payment(s) may be made in a single lump-sum payment, or in equal annual installments with no interest or prepayment penalty, the first of which shall be due within 30 days of the date on MDT's invoice. The single lump-sum payment or payment for the first year must be made prior to commencement of construction.

Optional Language 3
Upon the mutual agreement of MDT and the Facility Owner, Facility Owner shall provide MDT comparable in-kind telecommunication eligible facilities as an alternative to payment of fair market value as follows:

A. Facility Owner shall extend telecommunications facilities, at its expense, to allow for a telecommunications connection to designated and approved MDT facilities such as rest areas, maintenance storage areas and garages that are detailed in the Permit(s). As to possible future approved requests by MDT and to allow for the future interconnection of its fiber optic facilities, Facility Owner will construct periodic access points as detailed in the Permit(s) along its fiber optic route to meet servicing requirements; Facility Owner will connect to MDT facilities from these access points.

B. For existing designated MDT facilities such as maintenance areas or rest areas that are presently located on the other side of the roadway, across the roadway from the Facility Owner's fiber optic facilities, Facility Owner will construct a mutually agreed upon connection to the existing MDT facilities.

C. For other MDT facilities such as dynamic message signs, cameras or weather stations that are identified but for which there is no immediate need for a connection, Facility Owner will serve these facilities from its existing access points. The Facility Owner will construct the connection to the facilities from the access points when a service request is submitted by MDT and once MDT

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advises the Facility Owner that the designated locations are ready to utilize the fiber optic facilities.

D. The Facility Owner's obligation to construct telecommunications facilities to interconnect with MDT or other MDT facilities along its fiber optic line or across the roadway right-of-way as described in the Agreement/Lease and as specified herein, will only apply to fiber optic facilities constructed along the interstate highway right-of-way, and must be within two thousand (2000) feet of the nearest Roadway. Extensions to MDT and other MDT facilities beyond the two thousand (2000) foot limit will be at the expense of the requesting Facility Owner.

6. ALLOWED USE OF MDT INTERSTATE RIGHT-OF-WAY

The Facility Owner shall use MDT's Interstate right-of-way only for the Operations of an Eligible Project in strict compliance with all UPAS Permit requirements and the Utility Manual. Any other use of the MDT Interstate right-of-way by the Facility Owner without prior written permission from MDT shall constitute a breach of this Non-Exclusive Lease. The Facility Owner's use of MDT's Interstate right-of-way along with all Operations shall:

A. Comply with the requirements of all applicable governing agencies.

B. Not interfere or conflict with the operations of any other Eligible Project located in the same locations of the MDT Interstate right-of-way.

C. Include the right to exit and enter the right-of-way with lateral connections for the purpose of extending or connecting to adjacent facilities in accordance with federal and state statutes and regulations, and the Utility Manual.

D. Require the Facility Owner to cure, or if cure is not possible remove, any facility interfering with MDT operations within a negotiated timeframe after being notified of the interference and at the Facility Owner's sole expense. In cases of public safety, MDT may remove the facility immediately at the Facility Owner's sole expense.

E. Unless otherwise specified in this Non-Exclusive Lease or associated UPAS Permit, Facility Owner must comply with MDT's Administrative Rules and the Utility Manual, as amended.

7. MDT RIGHTS AND TITLE

The Facility Owner shall, by the execution of this Non-Exclusive Lease, always acknowledge and defend the title of MDT. It is mutually understood that the execution of this Non-Exclusive Lease shall not be construed as an abandonment, relinquishment of title, or non-use of the property by MDT. The Facility Owner acknowledges that the terms of this Non-Exclusive Lease are explicitly subject and subordinate to the rights and title of MDT and the State of Montana. MDT may provide construction oversight during the Project's construction. The Facility Owner will be responsible for reimbursing MDT for agreed upon construction inspections.

8. SUBORDINATION TO FEDERAL REQUIREMENTS

Facility Owner shall assume the risk of any loss to MDT of state or federal funding, either administrative or program dollars, that results from the Facility Owner's failure to comply with state or federal requirements. MDT shall notify the Facility Owner of any state or federal determination of noncompliance or warning of the same.

9. ENVIRONMENTAL PROCESSES & COMPLIANCE

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The Facility Owner agrees to prepare any necessary environmental documents and obtain any permits required by other governmental agencies at no expense to MDT. The Facility Owner shall refrain from discharging either intentionally or negligently any hazardous wastes upon MDT Interstate right-of-way. If a hazardous material spill or discharge occurs on MDT's Interstate right-of-way due to Facility Owner's actions or negligence, it is the responsibility of the Facility Owner to have the spill cleaned up according to State and Federal Laws and Regulations. Facility Owner agrees to defend, indemnify, and hold MDT, the State of Montana, and their elected and appointed officials, agents, and employees harmless from such a spill or discharge and shall remove and undertake and pay all costs and expenses associated with necessary cleanup to the MDT Interstate right-of-way in the event of Facility Owner's breach of this paragraph. Facility Owner shall provide Phase I review for hazardous waste if one is requested by MDT. In addition, Facility Owner shall complete the necessary environmental processes for modification to the MDT Interstate right-of-way and demonstrate that all, if any, environmental issues associated with the proposed UPAS Permits have been identified and mitigated. The Facility Owner must avoid, minimize, and mitigate impacts to cultural, environmental, or historical sites. The Facility Owner is responsible for obtaining all applicable environmental permits and clearances for its Operations of the Eligible Project. The Facility Owner agrees it will prepare and file any required environmental documents and apply for and obtain any permits required by other governmental agencies at no expense to MDT prior to Operations taking place within MDT Interstate right-of-way.
The obligations of the Facility Owner set forth in this section shall survive the termination of this Non-Exclusive Lease. However, if the Facility Owner removes all of its facilities from an MDT Interstate right-of-way and completes the required restoration or is allowed by MDT to leave its underground facilities in place, and provides MDT with a survey from an environmental consultant licensed to do business in the State of Montana documenting that the area is free and clear from all the Facility Owner generated contaminants, including approvals from appropriate environmental regulatory and permitting agencies, then this obligation shall be released in writing by MDT for that particular location.

Each permit required under this section (Environmental Processes & Compliance) shall be incorporated herein as an integral part of this Non-Exclusive Lease.

10. PERMISSION FROM OTHER LANDOWNERS/ENTITIES

The parties recognize MDT may not own in fee the entire interstate highway corridor upon which the Eligible Project is situated. Portions of MDT's Interstate highway 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 the Facility Owner's responsibility to determine if any other permits are necessary and obtain them from the other entities and provide them to MDT prior to commencement of any construction work. If, at any time after the Eligible Project is installed, the Facility Owner is required to remove the Eligible Project on portions of the MDT Interstate right-of-way because they do not have authority to locate therein from the underlying landowner, all removal costs shall be at the Facility Owner's sole expense. If any permits are required from local governments whose highways cross over or under MDT's Interstate right-of-way, the Facility Owner is responsible for determining ownership and obtaining necessary permits even though the Facility Owner's facility is technically within MDT's Interstate right-of-way.

11. SUBLEASING OR SALE OF ELIGIBLE FACILTY – ENTITY ENTERING MDT INTERSTATE RIGHT-OF-WAY MUST HAVE VALID UPAS PERMIT

The Eligible Project located in MDT's Interstate right-of-way shall be the Facility Owner's property throughout the term of this Non-Exclusive Lease until a new UPAS Permit is issued to a sublessee, assignee, or subsequent facility owner. Facility Owner may not sublease or assign this Non-Exclusive Lease or sell the Eligible Project facility without the prior written approval of MDT. If Facility Owner subleases, assigns, or sells excess capacity and/or extra conduits, Facility Owner agrees to do so on a

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competitively neutral and non-discriminatory basis and otherwise in compliance with all governmental requirements. Facility Owner may sell a portion of its facility or grant an "Indefeasible Right of Use" (IRU) to another facility owner. The Facility Owner shall notify MDT in writing prior to the closing of any transaction. The Facility Owner is required to continue as the single point of contact for all Operations on the Eligible Project unless and until the sublessees, assignees, or purchasers obtain their own UPAS Permit and become the primary point of contact for the acquired Eligible Project facility. Any Facility Owner who plans to enter MDT Interstate right-of-way to perform any inspections, maintenance, or repairs, must obtain its own UPAS Notification Permit. It is Facility Owner's obligation to notify any entity that acquires an interest in the Eligible Project of this requirement. Facility Owner retains all liability for the Operations of the Eligible Project until the new entity is issued a UPAS Permit and assumes Operations. If this Non-Exclusive Lease is not renewed or extended in some manner, Facility Owner must remove its property from the right-of-way at its own expense at the conclusion of this Non-Exclusive Lease and restore the right-of-way in accordance with the section on "Termination" below.

12. FACILITY RELOCATION

If a highway project or other MDT use conflicts with the placement of the Facility Owner's Eligible Project installed under this Non-Exclusive Lease, any relocation of the Eligible Project occupying MDT's Interstate right-of-way is subject to relocation and cost requirements set forth in Mont. Code Ann. §60-4-403.

13. LIENS

The Facility Owner is responsible for and shall promptly pay assessments, fees and other charges levied or assessed against its Eligible Project situated within MDT Interstate right-of-way for the term covered by this Non-Exclusive Lease. The Facility Owner shall not permit the filing of any liens against any part of MDT's Interstate right-of-way.

14. DAMAGES TO MDT FACILITIES

Facility Owner agrees that all damages to any MDT facility, right-of-way, or other property caused by the Facility Owner because of its Operations shall be repaired by the Facility Owner at its sole expense after MDT approves the repair work needed, method of repair, and the schedule for repair. The Facility Owner shall also be responsible for any of MDT's loss of service costs associated with such damage. The Facility Owner and MDT agree that for the purpose of this Non-Exclusive Lease the definition of "damages to MDT facilities" shall include, but is not limited to the following:

a. Flooding, erosion of any lateral surface feature or surface elevation location, saturation of soils due to flooding, flooding, erosion, seepage, sewage contamination, ground water contamination from slurry (if any), and loss of vegetation or any unforeseen damages as solely identified and documented by MDT.

b. Disturbances to any part of MDT's Interstate right-of-way for the Eligible Project areas or additional MDT property needed for staging or traffic control as set forth in the UPAS Permits, including any surface disturbances such as displacement of roadbed and surface materials.

c. Third party claims against MDT resulting from the Facility Owner's actions in MDT 's Interstate right-of-way associated with the Eligible Project.

d. Any and all other damages to MDT facilities identified by MDT and attributable to Facility Owner's Eligible Project.

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15. PUBLIC SAFETY & EMERGENCY EVENTS

If any repairs to the Eligible Project must be done to prevent a public hazard, the Facility Owner will immediately protect the area from public access, contact the Broadband Coordinator and the appropriate MDT Area Maintenance Chief contact as shown in Attachment B, and take corrective action to repair the hazard. The Facility Owner agrees that if any of its Operations cause an emergency event or damages to MDT's Interstate right-of-way, Facility Owner will immediately report such event or damage to the Broadband Coordinator and the appropriate MDT Area Maintenance Chief. Facility Owner may respond to any emergency so long as it strictly complies with MDT's UPAS Permit requirements. Facility Owner shall provide notice to the Broadband Coordinator and the appropriate MDT Area Maintenance Chief as soon as possible of such emergency activity. The Facility Owner must also timely notify environmental regulatory and permitting agencies, as applicable. If MDT incurs any costs as a result of a public safety or emergency event caused by the Eligible Project or its Operations that necessitates action on MDT's part concerning the maintenance or repair of the Eligible Project, MDT shall be compensated for such costs by the Facility Owner, and the Facility Owner shall pay the same within thirty (30) days of its receipt of such invoices.

16. TERMINATION

This Non-Exclusive Lease may be terminated at any time by mutual agreement of the parties or upon the occurrence of any of the following conditions:

(i) If all associated UPAS Permits are Terminated. This Non-Exclusive Lease shall terminate if all associated UPAS Permits are terminated.

(ii) By MDT for Facility Owner's Violations of the Law or Terms of this Non-Exclusive Lease. MDT may, after written notice and giving the opportunity for cure as set forth below, terminate this Non-Exclusive Lease if the Facility Owner fails to comply with the terms of this Non-Exclusive Lease, a federal or state law or regulation, or the Utility Manual. The Facility Owner shall have up to thirty (30) days to cure all violations or start the cure if by its nature the condition cannot be resolved within the time allowed and the Facility Owner has received a written extension from the Broadband Coordinator: however if public safety is threatened that requires the Facility Owner's prompt attention, the Facility Owner shall act immediately to cure the hazard or Violation. The Facility Owner's failure to comply with respect to an individual permit may not necessarily result in the termination of all permits or this Non-Exclusive Lease.

(iii) By MDT for Abandonment. MDT may terminate this Non-Exclusive Lease if the Eligible Project facilities within the MDT Interstate right-of-way cease to be used by the Facility Owner for a period of one year or are otherwise abandoned.

(iv) By Facility Owner for Commercial Reasons. The Facility Owner may terminate this Non-Exclusive Lease with written notice to MDT if:

a. At any time during the term of this Non-Exclusive Lease, it becomes commercially, economically, technologically, or legally inadvisable in the Facility Owner's business judgment for it to utilize MDT's Interstate right-of-way; or

b. All, or a significant portion of the Facility Owner's Eligible Project facilities are destroyed by a natural disaster, fire, war, or other calamity; or

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c. Any required certificate, permit, license, or approval is denied, canceled, or otherwise terminated such that it is unable to use MDT's Interstate right-of-way for the Facility Owner's intended purposes.

Upon the termination of this Non-Exclusive Lease:

(i) Facility Owner's Obligation to Restore MDT Interstate right-of-way. MDT and Facility Owner shall determine a reasonable date by which Facility Owner shall remove the Facility Owner's Eligible Project facilities. Facility Owner may transfer ownership of the Facility Owner's facilities located within MDT's Interstate right-of-way to MDT only if MDT agrees to accept ownership. If a transfer of ownership to MDT is completed, the Facility Owner shall have no further obligations under this Non-Exclusive Lease.

(ii) Forfeiture of PrePaid Fees. Facility Owner shall forfeit any prepaid rental fees.

(iii) Bankruptcy. If the Facility Owner files for bankruptcy or becomes insolvent, MDT reserves the right at its sole discretion to terminate this Non-Exclusive Lease and hold the Facility Owner liable for all resulting damages, including MDT's cost to remove the Eligible Project.

17. Hold Harmless & Indemnification

Facility Owner shall defend, indemnify and hold harmless the State of Montana, Montana Department of Transportation, the contracting agency hereunder, and their elected and appointed officials, agents, and employees against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Facility Owner's or its agent's/contractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting or allegedly resulting in whole or part from acts or omissions of Facility Owner and/or its agents/contractors, employees, representatives, assigns, and subcontractors, except the sole negligence of MDT.

18. Insurance

Facility Owner shall maintain for the duration of this Non-Exclusive Lease, at their cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with any act or omission by Facility Owner and their agents, employees, representative, assigns or subcontractors. This insurance shall cover such claims as may be caused by any intentional or negligent act or omission of the Facility Owner and their agents, employees, representative, assigns or subcontractors. The Facility Owner's insurance coverage shall be primary insurance with respect to MDT and MDT officers, officials, employees and volunteers and shall apply to the Project and Operations and its locations. Any insurance or self-insurance maintained by MDT and MDT officers, officials, employees or volunteers shall be excess of the Facility Owner's insurance and shall not contribute to it.

a. Commercial General Liability Insurance: Facility Owner shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage as set forth below, to cover such claims as may be caused by any act, omission, or negligence of the Facility Owner or their officers, agents, representatives, assigns, or subcontractors. Commercial General Liability insurance covering all operations under the Agreement/Lease shall have coverage substantially similar to the standard ISO Commercial General Liability Insurance policy, the limits shall be:

Each Occurrence	$5,000,000
General Aggregate	$5,000,000
Excess/Umbrella Liability Insurance	$10,000,000

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Facility Owner must notify MDT immediately of any change in insurance coverage during the term of this Agreement/Lease.

b. Additional insured status: The State, MDT, and MDT officers, officials, employees, and volunteers are to be covered and listed as additional insureds arising out of the activities performed by or on behalf of Facility Owner, including the insured's general supervision of any contractor; products, and completed operations; premises owned, leased, occupied or used.

c. Certificates of Insurance: Insurance is to be placed with an insurer with a Best's rating of no less than A-. The Best's rating requirement does not apply to any governmental entity self-insurance or risk- sharing pool insurance coverage. Facility Owners must notify MDT immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. and MDT reserves the right to require complete copies of insurance policies at any time.

d. Workers' Compensation Insurance: Facility Owner is required to maintain workers' compensation insurance or an independent contractor's exemption covering the contractor and/or employees while performing work within MDT's Interstate right-of-way in accordance with §39-71-401/405, Montana Code Annotated. Neither the Facility Owner nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Non-Exclusive Lease term.

19. Invoicing and Indirect Costs

Section 17-1-106, MCA, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct costs. MDT's IDC rate is determined annually as a percentage of the direct costs to cover the share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII.

If MDT incurs any costs resulting from this Non-Exclusive Lease, MDT shall be entitled to be compensated for such costs including IDC by the Facility Owner and Facility Owner shall pay the same within thirty (30) days of its receipt of such invoices.

Invoices will be sent to:

Facility Owner Name
Facility Owner Contact
Facility Owner Address
City, State, Zip

Payments shall be made to:

Montana Department of Transportation
Attention: MDT Broadband Coordinator
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

20. Choice of Law and Venue

This Non-Exclusive Lease shall be governed by the laws of Montana. The parties agree that any litigation concerning this Non-Exclusive Lease must be brought in the First Judicial District Court, in and for the

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County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise noted in this Non-Exclusive Lease.

21. Binding Effect

The benefits and obligations set forth in this Non-Exclusive Lease shall be binding upon, and inure to the benefit of, their respective successors, administrators and assigns of the Parties.

22. Relationship of Parties

Nothing contained in this Non-Exclusive Lease shall be deemed or construed (either by the Parties hereto or by any third party) to create the relationship of principal and agent or create any partnership joint venture or other association between the Parties.

23. Non-Discrimination

Facility Owner will require that during the performance of any work arising out of this Non-Exclusive Lease the Facility Owner, for itself, assignees, and successors shall comply with all applicable non-discrimination regulations set forth in Attachment A.

24. Retention of Records and Audit Rights

The Facility Owner agrees to create and retain records supporting this Non-Exclusive Lease for a period of three years after the completion date of this Non-Exclusive Lease or the conclusion of any claim, litigation or exception relating to the Non-Exclusive Lease taken by the State of Montana or a third party. The Facility Owner agrees to provide MDT, the Legislative Auditor, the Legislative Fiscal Analyst, or their authorized agents, access to any records without prior notice and during normal business hours, to audit, at the auditor's own cost and expense, all records, reports, and other documents the Facility Owner maintains in connection with this Non-Exclusive Lease as necessary to determine compliance with the terms of this Non-Exclusive Lease. (Mont. Code Ann. §18-1-118).

25. Utilities

The right of any private or public utility now lawfully occupying the MDT Interstate right-of-way to operate an Eligible Facility supersedes any right granted by this Non-Exclusive Lease to Facility Owner. Copies of existing UPAS permits may be obtained from the MDT Broadband Coordinator.

26. Amendment and Modification

The Parties may modify or amend this Non-Exclusive Lease only by a written Amendment signed by the Parties. The Amendment will control any conflict between the Amendment and the Non-Exclusive Lease.

27. Representatives

(i) Facility Owner's Representative: The Facility Owner's Representative for this Non-Exclusive Lease shall be the Facility Owner Manager or designee or such other individual as Facility Owner shall designate in writing. Whenever approval or authorization from or communication or submission to Facility Owner is required by this Non-Exclusive Lease, such communication or submission shall be directed to the Facility Owner's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when Facility Owner's Representative is not available, MDT may direct its

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communication or submission to other designated Facility Owner personnel or agents. Initially, the contact information for Facility Owner's Representative is:

(ii) MDT's Representative: Whenever direction to or communication with MDT is required by this Non-Exclusive Lease and the Non-Exclusive Lease does not identify who at MDT should receive the communication, such communication shall be directed to MDT's Broadband Coordinator, or such other individual as MDT shall designate in writing; provided, however, that in exigent circumstances when MDT's Representative is not available, Facility Owner may direct its direction or communication or submission to other designated MDT personnel or agents.

Contact information for MDT's Broadband Coordinator is:

Name
Phone
Email

28. Assignment and Collateral

Facility Owner may not assign this Non-Exclusive Lease without the prior written approval of MDT. The Facility Owner shall not use this Non-Exclusive Lease, or any portion thereof, for collateral for any financial obligation without the prior written permission of the MDT. MDT's approval or permission shall not be unreasonably withheld.

29. Certificate of Good Standing.

Facility Owner must be registered with the Montana Secretary of State and authorized to conduct business in the State of Montana before performing any Operations under this Non-Exclusive Lease. Facility Owner shall ensure that all annual reports due to the Secretary of State's office are timely filed during the Term of this Non-Exclusive Lease.

30. Compliance with Laws

Facility Owner shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Non-Exclusive Lease.

31. Force Majeure

Neither party shall be liable for failure to perform under this Non-Exclusive Lease if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays.

32. Independent Contractor

Facility Owner shall function as an independent contractor for the purposes of this Non-Exclusive Lease and shall not be considered an employee of the MDT or the State of Montana for any purpose. Facility Owner shall assume sole responsibility for any debts or liabilities that may be incurred by the Facility Owner in fulfilling the terms of this Non-Exclusive Lease and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Non-Exclusive Lease. Nothing in

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this Non-Exclusive Lease shall be interpreted as authorizing the Facility Owner or its agents or employees to act as an agent or representative for or on behalf of the State of Montana or MDT or to incur any obligation of any kind on behalf of the State of Montana or MDT. The Facility Owner agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Montana employees will inure to the benefit of the Facility Owner or the Facility Owner's agents or employees as a result of this Non-Exclusive Lease.

33. Severability

Should any portion of this Non-Exclusive Lease be judicially determined to be illegal or unenforceable, the remainder of the Non-Exclusive Lease shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

34. Time is of the Essence

Time is of the essence in all provisions of this Non-Exclusive Lease.

35. Waiver

The waiver of any breach of any term or condition in this Non-Exclusive Lease shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

36. Entirety of Agreement

This Non-Exclusive Lease, inclusive of its attachments and those permits incorporated herein, represents the entire and integrated Non-Exclusive Lease between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Non-Exclusive Lease and the language of any UPAS Permit, the UPAS Permit shall control.

37. Counterpart Execution

This Non-Exclusive Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Non-Exclusive Lease. The counterparts of this Non-Exclusive Lease may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

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MONTANA
Department of Transportation

Christopher Dorrington, Director

2701 Prospect ▪ PO Box 201001
Helena MT 59620-1001

IN WITNESS WHEREOF, the Department's authorized representative has signed on behalf of the State of Montana, and the Facility Owner's authorized representative on behalf of the [Insert Facility Owner Name], has signed. This agreement is effective upon signature date below.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____ _____
Montana Department of Transportation — Date

_____
Approved for Legal Content

_____
Approved for Civil Rights

Facility Owner

By _____ _____
Date

Sample

MONTANA
Department of Transportation

Christopher Dorrington, Director

2701 Prospect ▪ PO Box 201001
Helena MT 59620-1001

ATTACHMENT A

MDT Nondiscrimination and Disability Accommodation Notice

Sample

Right of Way Bureau – Utility Section
Phone: (406) 444–6080
Fax: (406) 444–6091
MDT-ROW-890
Rev. 06/24

Engineering Division
TTY: (800) 335–7592
Web Page: www.mdt.mt.gov