**Application and Utility
Use and Occupancy
Agreement – Fiber Optic**

Agreement No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
State Route No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Project No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
County \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Type of Surety \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Bond / Check No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Cable Facilities on Freeways**

Application is hereby made by (Name): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
for permission to install and maintain the following described longitudinal fiber optic cable facilities on the freeway right-of-way of State Highway No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
At the following described location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Location: GPS = N \_\_\_\_\_\_\_\_\_\_\_\_\_\_ E \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Log Mile = Start \_\_\_\_\_\_\_\_\_\_\_\_\_\_ End \_\_\_\_\_\_\_\_\_\_\_\_\_\_

in accordance with the attached plan and subject to *RULES AND REGULATIONS FOR ACCOMMODATING UTILITIES WITHIN HIGHWAY RIGHTS-OF-WAY* hereto issued by the Department of Transportation, and made a part hereof by reference thereto, and particularly to those provisions shown on this agreement and any special provisions set forth herein.

Special Provisions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**To be completed by TDOT Staff:**

Check one: [ ]  Urban [ ]  Suburban [ ]  Rural

Application Fee: $200.00 base fee + $10.00 for each mile of installation = ­$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Check one (or more): [ ]  Annual Fee [ ]  Up-Front Fee [ ]  In-Kind Compensation

Applicant is to deliver a **surety bond**, issued by a company licensed to do business in the State of Tennessee and in a form acceptable to the Tennessee Department of Transportation (TDOT), in the sum of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to guarantee full and faithful performance of the terms and conditions of the Use and Occupancy Agreement, including without limitation the repair and restoration of the right-of-way premises, the payment of any monetary compensation remaining due to TDOT for use of the freeway right-of-way, and the completion of any installation of fiber optic facilities to be provided to the Department as compensation under this Use and Occupancy Agreement.

This agreement is to be strictly construed and no work other than that specifically described above is hereby authorized.

**The Applicant, in applying for this agreement, agrees to the following:**

1. a. This Use and Occupancy Agreement shall be for a term of twenty (20) years, beginning on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_ and ending on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

(Dates to be filled in by TDOT Staff only)

b. Upon the expiration of the initial term of the Use and Occupancy Agreement, the Applicant shall have an option to renew the Use and Occupancy Agreement for a term of 10 years or 20 years, subject to the applicable rate of compensation established by the Advisory Board as of the date of renewal.

1. a. If Annual Remittance is checked above, Applicant hereby remits the first year’s annual fee of       dollars ($     ) concurrently with this Application, and agrees to pay said annual fee, on or before the month and day last signed below, each year thereafter until the expiration of this Use and Occupancy Agreement.

b. If Up-Front Remittance is checked above, Applicant hereby remits the up-front fee of       dollars ($     ) concurrently with this Application, as payment for the full term of this Use and Occupancy Agreement.

c. If In-Kind Compensation is checked above, TDOT hereby acknowledges in-kind compensation to be received, valued at       dollars ($     ), and any required annual fee or up-front fee amount in excess of the proposed in-kind compensation is listed in subparagraph a. or b. above, as applicable.

1. Applicant shall design, install and maintain its facilities in accordance with *RULES AND REGULATIONS FOR ACCOMMODATING UTILITIES WITHIN HIGHWAY RIGHTS-OF-WAY* hereto issued by TDOT, and specifically in accordance with Rule 1680-06-01-.09, which is incorporated herein by reference.
2. Applicant, before commencing any work or installing any facilities, shall submit to TDOT's regional office plans showing the location, type and scope of all work to be done or appliances to be installed in order that the Regional Utilities Coordinator may recommend approval of the proposed work.
3. Applicant agrees that it will be responsible for any damages caused by any negligence on its part, including but not limited to the improper placing of or failure to display construction signs, danger signs, and other required signing and will bear any expense proximately caused by its operation on the right-of-way.
4. Applicant shall pay the salary and miscellaneous expenses of any inspector(s) that TDOT may see fit to place upon the work while such inspector(s) is/are assigned to this work. TDOT, before incurring any expenses expected to be charged to the Applicant, shall advise the Applicant in writing of this fact.
5. Applicant shall replace or repair any portion of the pavement, shoulders, bridges, or private driveways, or any part of said highway, which may be disturbed or damaged by Applicant. Replacements and repairs shall be made in accordance with the current TDOT Standard Specifications for Road and Bridge Construction and any additional instructions which may be issued by TDOT. Applicant agrees that TDOT may accomplish further replacements or repairs in the event those made by the applicant are not satisfactory, in which event the Applicant will reimburse TDOT for the cost of such other replacements or repairs. Except in cases of emergency, TDOT shall notify the Applicant of the nature and extent of such further replacements or repairs to be accomplished prior to undertaking the work.
6. a. If, at any time, TDOT determines that any fiber optic cable facilities need to be relocated within, or removed from, the state freeway right-of-way for any reason related to TDOT’s use, operation, maintenance, construction or reconstruction of the freeway, Applicant shall relocate or remove the facilities as directed by written notice from TDOT.

b. All such costs of relocation or removal, including the cost of relocating any part of the fiber optic cable facilities reserved to TDOT under the Use and Occupancy Agreement, shall be borne by the Applicant and not by TDOT, except as TDOT may otherwise agree in accordance with a special condition of the Use and Occupancy Agreement executed prior to the installation, or as TDOT may subsequently agree in writing under a utility relocation contract.

c. Applicant shall complete the relocation or removal cooperatively and in the reasonable manner and time as TDOT shall specify by written notice, or within such additional time as TDOT may authorize in writing. Upon the failure of Applicant to relocate or remove the fiber optic cable facilities within the specified time, or such additional time as TDOT may authorize in writing, the fiber optic cable facilities shall be deemed to be abandoned by Applicant, and TDOT shall be deemed the owner thereof; provided, however, that TDOT, in its sole discretion, may refuse ownership of the abandoned fiber optic cable facilities at any time within one year after the abandonment and thereupon hold Applicant liable for the costs of removing such facilities from the state freeway right-of-way.

d. To the extent that Applicant is required to remove fiber optic cable facilities from the state freeway right-of-way, Applicant shall to that extent be relieved of any further obligation under the Use and Occupancy Agreement to compensate TDOT for the use of the state freeway right-of-way. To the extent that Applicant is allowed to relocate fiber optic cable facilities to another location within the freeway right-of-way, Applicant may elect either to remain under the terms of compensation specified in the Use and Occupancy Agreement, or Applicant may choose to enter into a new Use and Occupancy Agreement for the new location.

1. Applicant shall be responsible for resolving any conflicts with other utilities or appurtenances that are on the highway right-of-way and shall notify the respective owner(s) of any conflicts and secure owner permission for any alterations.

10. a. Applicant hereby agrees to indemnify the State of Tennessee and TDOT, and their officers, employees and agents, and hold them harmless to the maximum extent allowed under Tennessee law for any and all claims arising from the telecommunications company’s use of the freeway right-of-way to install, operate and/or maintain fiber optic cable facilities, including claims by third parties, and including attorneys’ fees and all other costs of preparing for and defending against such claims, regardless of any negligence or fault of the State of Tennessee or TDOT.

 b. Without limiting the foregoing, Applicant shall hold the State of Tennessee and TDOT, and their officers, employees and agents, harmless, to the maximum extent allowed under Tennessee law, for any personal injury or property damage, including interruption of service or loss of business, incurred by the Applicant, or its officers, employees or agents, arising from TDOT’s construction, reconstruction, operation or maintenance of the freeway or freeway right-of-way, regardless of any negligence or fault of the State of Tennessee or TDOT.

 c. In the event of any such suit or claim, the Applicant shall give TDOT immediate notice thereof and shall provide all assistance required by TDOT in TDOT’s defense. TDOT shall give the Applicant written notice of any such claim or suit, and the Applicant shall have full right and obligation to conduct the Applicant’s own defense thereof. Nothing contained herein shall be deemed to accord to the Applicant, through its attorney(s), the right to represent TDOT in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

1. Applicant may not assign or transfer its rights or obligations under this Use and Occupancy Agreement to another telecommunications company or other entity or person without first giving written notice to, and obtaining the consent of, TDOT, which consent shall not be unreasonably withheld.
2. Applicant shall at all times have and maintain, and upon the request of TDOT shall provide written proof of, liability insurance policies containing, at a minimum, the following insurance coverage:

a. Commercial general liability insurance.

b. Commercial automobile liability insurance for all vehicles owned or used by the Applicant in any phase of the construction, installation, operation, maintenance or repair of its fiber optic cable facilities within the freeway right-of-way.

c. All such liability insurance policies shall provide liability coverage sufficient, at a minimum, to match the State’s limits of liability under Section 9-8-307 of the Tennessee Code. These limits are currently set at $300,000 per claimant and $1,000,000 per occurrence, but they are subject to change.

d. All such liability insurance policies shall name the State of Tennessee and TDOT each as an additional insured for the purposes of fulfilling the telecommunications company’s obligations under the Use and Occupancy Agreement, including without limitation any and all obligations to indemnify and hold harmless the State of Tennessee and TDOT, and their officers, employees and agents.

1. TDOT does not grant the Applicant any right, title or claim on any highway right-of-way and in granting this permission to go upon the right-of-way does not, in any way, assume the maintenance of the Applicant's facility.
2. Applicant may be required by law to obtain one or more environmental permits prior to installing its facilities. Determining which permits are necessary and obtaining those permits are the sole responsibility of the Applicant. Contact information for the regulatory agencies is available from TDOT upon request. The activities of the Applicant in installing its facilities pursuant to this Agreement are not covered under any permit associated with TDOT construction activities.
3. Applicant agrees that if the total area of disturbed land associated with the installation of its facilities is planned to exceed, or does at any time actually exceed, one (1) acre, Applicant shall obtain coverage under a *National Pollutant Discharge Elimination System General Permit for Discharges of Stormwater Associated With Construction Activities*.
4. Applicant agrees that during all phases of work permitted herein, it shall implement and maintain appropriate Erosion Prevention and Sediment Control measures, as described in the TDOT *Standard Specification for Road and Bridge Construction* and/or the Tennessee Department of Environment and Conservation *Erosion and Sediment Control Handbook*.
5. The Utility agrees that it shall comply with all State and Federal laws, rules, regulations, and permit terms and conditions applicable to the installation and maintenance of the Applicant’s facilities.
6. This agreement shall become void if work is not commenced within a year from the date of execution of this Agreement.

**Applicant**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_
Signature Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Print Name and Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company Name and Mailing Address

**State of Tennessee**

**Department of Transportation**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_
 Regional Utility Coordinator Date

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_
 Regional Engineering Director Date

Agreement granted to make the above described installation in accordance with the applicable sections of the Rules and Regulations, Regulations shown herein of this agreement and Special Provisions made a part of this agreement, this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_