

**EXHIBIT A****Section 1 - NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

The Licensee agrees to notify the Railroad Representative at least 10 days in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

**Section 2 - LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3 - NO INTERFERENCE WITH RAILROAD'S OPERATION.**

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.

**Section 4 - PERMITS.**

Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this Agreement.

**Section 5 - MECHANIC'S LIENS.**

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such work performed. The Licensee shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

**Section 6 - FIBER OPTIC CABLE SYSTEMS.**

In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any

telecommunications system on Railroad's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 7 - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

**Section 8 - SAFETY INSTRUCTIONS.**

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a. The Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.

b. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

(1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name.

(2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractors' equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

**Section 9 - INDEMNITY.**

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (i) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (ii) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement; regardless of whether caused solely or contributed to in part by the negligence or fault of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

**Section 10 - RESTORATION OF PROPERTY.**

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

**Section 11 - WAIVER OF BREACH.**

The waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

**Section 12 - ASSIGNMENT - SUBCONTRACTING.**

The Licensee shall not assign, sublet or subcontract this Agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this Agreement.

DEED BOOK 690 PAGE 272 = 276  
DATE 02/02/2005  
TIME 03:28:21 PM  
RECORDED IN,  
OFFICIAL RECORDS OF  
CRAIGHEAD COUNTY  
ANN HUDSON  
CIRCUIT CLERK  
*M. Hudson*, D. C.  
RECEIPT# 131368