

United States Department of the Interior
National Park Service

Right-of-Way Permit for
[insert name of permittee]
Right-of-Way Permit No.: **[RW XXXX-XX-XXX]**

Whereas, on **[insert date of application]** **[insert full legal name and address of permittee]** (Permittee) applied to the National Park Service (NPS), United States Department of the Interior for a right-of-way to use or occupy NPS-administered lands or waters within **[insert name of park unit]** (Park), a unit of the National Park System, in order to operate and maintain an **[insert brief description of project]**;

Whereas, the Park was established by or pursuant to **[cite the specific authorizing legislation or proclamation for the park unit]**;

Whereas, 54 U.S.C. § 100101(a) directs the Secretary of the Interior, acting through the NPS, “to conserve the scenery, natural and historic objects, and wild life” in units of the National Park System and to provide for their enjoyment “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations”;

Whereas, 54 U.S.C. § 100101(b)(2) provides that the authorization of activities in the National Park System “shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress”;

Whereas, 54 U.S.C. §§ 100902(a) and 100902(b) authorize the Secretary of the Interior to grant rights-of-way within the boundaries of federally owned lands or waters administered by the NPS for the purposes enumerated in those laws and subject to the other conditions in them, provided that the Secretary finds that the rights-of-way are not incompatible with the public interest;

Whereas, the NPS has promulgated regulations, codified at 36 C.F.R. part 14, governing the issuance, use, and management of rights-of-way within the boundaries of federally owned lands or waters administered by the NPS; and

Whereas, the NPS has determined that the proposed use or occupancy of the NPS-administered lands or waters described herein for the operation and maintenance of **[insert brief description of project]** is not incompatible with the public interest;

Now, therefore, the NPS, acting pursuant to the authority of **[cite here only the relevant authority for this Permit, either 54 U.S.C. § 100902(a) or § 100902(b)]** hereby grants to the Permittee this revocable, non-exclusive right-of-way permit (Permit) within the boundaries of federally owned lands or waters administered by the NPS described below (Permitted Area). This Permit constitutes only a revocable, non-exclusive license to use or occupy the Permitted Area for the purposes described in the Permit during the term of the Permit. By accepting this Permit, the Permittee agrees to comply with the regulations in 36 C.F.R. part 14 (or any successor regulations), other applicable laws and regulations, and the terms and conditions set forth in this Permit. The Park's Superintendent (Superintendent) will be the NPS official primarily responsible for administering this Permit.

Authority to Enter into Permit

The Permittee represents and warrants to the NPS that:

(1) The Permittee is authorized under the laws of **[insert name of appropriate state]** and by its governing documents to enter into this Permit; and

(2) The person signing this Permit on the Permittee's behalf is authorized to bind the Permittee to comply with the Permit's terms and conditions.

Legal Description and Map of Permitted Area

The legal description of the Permitted Area is as follows:

[Insert a legal description of the Permitted Area, including ingress and egress that meets the standards described in Reference Manual (RM) 53B for either built or not yet built infrastructure and linear or nonlinear ROWs]

[Choose one of the following:]

[If the infrastructure is already built:]

And as depicted on the dated map attached to this Permit as Exhibit A. **[Exhibit A must be a map of Permittee's as-built infrastructure, submitted with the application and meeting the applicable standards described in RM53B.]**

[If the infrastructure is not yet built:]

And as depicted on the dated map attached to this Permit as Exhibit A and labeled "Interim Map." **[Exhibit A must be a map submitted with the application and meeting the applicable standards described in RM53B, as noted above.]**

If the Permittee has not yet completed construction of its infrastructure, then the Permittee must also provide the NPS a final map and legal description of the Permitted Area as described in the paragraph below. The Permittee must submit any proposed deviation from the interim map and legal description to the NPS for review and written approval before construction commences. Any deviation from the interim map and legal description may require additional environmental compliance and reappraisal.

Within 90 days after the Permittee completes construction of its infrastructure, the Permittee must provide the NPS a dated final as-built map and legal description meeting the standards for infrastructure that already exists. If the map and legal description are based on DGPS points, then all DGPS points must be remeasured to match actual as-built conditions. These final documents must be delivered to the Superintendent. The NPS and the Permittee agree that the final map and legal description, once approved by the NPS in writing, will describe the area authorized for the Permittee's use or occupancy under this Permit and will be attached to this Permit as Exhibit B and labeled "Final Map and Legal Description." If the Permittee's infrastructure is not built as authorized, then the NPS may, in its sole discretion, decline to approve the final map and legal description and instead require the Permittee to remove the infrastructure from the Permitted Area.

[Include the following paragraph for all permits:]

The Permittee may not deviate from the approved Permitted Area in its operation and maintenance of the **[insert brief description of project]**. If the Permittee determines that it needs to use or occupy NPS-administered lands or waters not specifically described in this Permit for the operation and maintenance of the **[insert brief description of project]**, then the Permittee must apply in writing to the NPS for authorization to use or occupy the additional area. After considering the Permittee's application, the NPS, in its sole discretion, may authorize the use or occupancy of the additional area by amending this Permit or by issuing a new permit that includes such terms and conditions as the NPS deems appropriate. In its sole discretion the NPS may also deny the Permittee's request for authorization to use or occupy the additional area.

Permitted Use of Right-of-Way

In connection with the **[insert brief description of project]**, this Permit authorizes the Permittee to operate and maintain the following facilities or equipment in the Permitted Area:

[List here or attach as an exhibit to the Permit a list or description of all authorized facilities or equipment; e.g., number and length of power lines and number of poles, including material and height; number of telecommunication towers, including material, type, and height; number, length, and buried depth of fiber-optic cable.]

This Permit authorizes the operation and maintenance only of the facilities or equipment specifically described in the Permit. If the Permittee determines that it needs to operate and maintain facilities or equipment other than those specifically described in this Permit, then the Permittee must apply in writing to the NPS for authorization to operate and maintain the additional facilities or equipment. After considering the Permittee's application, the NPS, in its sole discretion, may authorize the operation and maintenance of the additional facilities or equipment by amending this Permit or by issuing a new permit that includes such terms and conditions as the NPS deems appropriate. In its sole discretion the NPS may also deny the Permittee's request for authorization to operate and maintain the additional facilities or equipment.

Effective Date and Term of Permit

This Permit will be effective on the date of its signature by the NPS Regional Director and will expire automatically 10 years after its effective date at noon, **[insert appropriate time zone]**, unless it is earlier revoked, terminated, or abandoned pursuant to the provisions of this Permit or in accordance with applicable federal law.

Reauthorization of Use

In order to continue use or occupancy of the Permitted Area beyond the initial term without interruption, the Permittee must submit to the Superintendent a written application for reauthorization, on the then-current NPS-approved form and in accordance with then-existing NPS regulations and policies, at least 6 months before the Permit's expiration date. After considering the application, the NPS, in its sole discretion, may reauthorize the use and occupancy of the Permitted Area by issuing a new permit that includes such terms and conditions as the NPS deems appropriate. The Permittee hereby acknowledges that reauthorization is not guaranteed, and that the Permittee does not have a preferential right to reauthorization as a result of the NPS's issuance of this Permit.

Termination of Permitted Right-of-Way

At any time during the term of this Permit the NPS, in its sole discretion, may, without incurring any liability whatsoever, terminate all or any part of the permitted right-of-way. If the NPS terminates all or any part of the right-of-way before the Permit expires by its own terms, then the NPS will provide the Permittee 30 days advance written notice of the termination, including the reasons for the termination.

Abandonment of Permitted Right-of-Way

At any time during the term of this Permit, if the Permittee fails to use or occupy the Permitted

Area for a period of 2 years, then the NPS, in its sole discretion, may deem the permitted right-of-way abandoned and may take whatever action it determines is necessary to secure and restore the Permitted Area. The NPS will provide the Permittee written notice of its determination that the Permittee has abandoned the permitted right-of-way. In case of abandonment, the Permittee will be responsible for reimbursing the NPS for all of its costs to secure and restore the Permitted Area.

Reimbursement of Costs

[Choose one of the following:]

[If charging cost recovery:]

Pursuant to 54 U.S.C. § 103104 the Permittee has paid the NPS for administrative and other costs incurred by the NPS in processing the application for the Permit and agrees to reimburse the NPS for costs incurred by the NPS in monitoring the uses or activities authorized by this Permit.

[If not charging cost recovery:]

Pursuant to 54 U.S.C. § 103104 the NPS has elected not to recover the costs of providing necessary services associated with this Permit.

Fees for Use and Occupancy

[Choose one of the following:]

[If charging use and occupancy:]

Pursuant to 36 C.F.R. § 14.8 (a) the Permittee will pay fair market value for the use and occupancy of NPS-administered lands or waters. The charge for use and occupancy of the Permitted Area will be \$_____ per year. Pursuant to 36 C.F.R. § 14.8 (c) the NPS may periodically review the charges for this Permit and impose such new charges as may be reasonable and proper.

[If not charging use and occupancy:]

The NPS and Permittee understand and agree that the consideration for utilization of the Permitted Area for this **[Cite the applicable discretionary exemption at 14.8 (e)]** is waived in accordance with 36 C.F.R. § 14.8 (e).

Terms and Conditions

This Permit and the uses or activities authorized under it are subject to the following terms and conditions:

- (1) This Permit may be amended only by a written instrument executed by the Superintendent and the Permittee.
- (2) The Permittee may not transfer or assign this Permit to another party without obtaining the NPS's prior written approval.
- (3) The Permittee is responsible for ensuring that its officers, employees, representatives, agents, contractors, and subcontractors are familiar with this Permit and comply with its terms and conditions. All persons working for the Permittee within the Permitted Area must carry a copy of this Permit.
- (4) The Permittee must provide the NPS with current contact information (company address, points of contact, telephone numbers, email addresses, etc.) for both routine and emergency communications.
- (5) The Permittee must post on its facilities in the Park at least one sign, of a design and in a location acceptable to the NPS, with the company's name, primary point of contact, and emergency telephone number.
- (6) The Permittee must notify the Superintendent in writing at least 5 business days before conducting any maintenance or non-emergency repair work within the Permitted Area. The written notice must describe the location of the proposed work, the equipment to be used, and the size of work crews anticipated to be working in the Park. The Superintendent may require an on-site meeting before any maintenance or non-emergency repair work commences and may assign a site monitor to be present during such work. Except in emergencies, all work in the Permitted Area must be conducted during the Park's normal business hours. To respond to an emergency, the Permittee may enter the Permitted Area at other times to conduct repair work after notifying the Superintendent at **[insert Superintendent's email address]** and calling the Park's Chief of Facilities Management at **[insert Chief of Facilities Management's telephone number]**.
- (7) The Permittee must erect and maintain appropriate warning signs, barricades, or other warning devices during all periods when it is using the Permitted Area, including periods of maintenance or repair.
- (8) The NPS may enter and inspect the Permitted Area at any time without providing prior notice to the Permittee.
- (9) If necessary to protect Park resources or visitors, the NPS may require the Permittee to suspend its activities in the Permitted Area or to relocate or remove its facilities or equipment; provided that if

the NPS determines that the Permittee must relocate or remove its facilities or equipment, the NPS will exercise its best efforts to accommodate the Permittee at another location in the Park.

- (10) Notwithstanding the issuance of this Permit, the NPS (a) may establish trails, roads, or other improvements across, over, on, or through the Permitted Area for use by the NPS, by Park visitors, or by others and (b) may authorize its contractors or other permittees to use the Permitted Area at the same time that the Permittee is using it, as long as those other uses will not unreasonably interfere with the Permittee's use of the Permitted Area under this Permit.
- (11) The Permittee may not allow another party to co-locate equipment on the Permittee's infrastructure without obtaining the NPS's prior written approval. As a condition of such approval the NPS will require the co-locator to apply for and be issued its own NPS right-of-way permit.
- (12) The Permittee must keep the Permitted Area clean and free of litter or other debris at all times.
- (13) Except as expressly authorized by this Permit or subsequently approved in writing by the Superintendent, the Permittee may not move, remove, alter, damage, or destroy any Park resources within the Permitted Area or the Park. As directed by the Superintendent, the Permittee must take all reasonable measures to avoid or minimize damage to Park resources. The Superintendent may require reasonable mitigation in return for allowing impacts to Park resources under this Permit.
- (14) The Permittee must immediately suspend all activities and notify the Superintendent upon the discovery of any threatened or endangered species or archeological, paleontological, or historical resources within or near the Permitted Area. All natural and cultural resources discovered in the Permitted Area are the property of the United States.
- (15) The Permittee may not use pesticides or herbicides on Park lands without obtaining the Superintendent's prior written approval.
- (16) The Permittee must do everything reasonably within its power to prevent and suppress fires resulting from the Permittee's activities under this Permit.
- (17) Within 4 hours after the damage or disruption occurs, the Permittee must repair or restore any utilities within the Park that are damaged or disrupted as a result of the Permittee's activities under this Permit.
- (18) Within 6 months after the expiration or termination of this Permit, the Permittee must remove all of its facilities and equipment from the Permitted Area and restore the Permitted Area to its pre-Permit condition as directed and approved by the Superintendent. Any facilities or equipment not removed within that time will be deemed abandoned and will be disposed of in accordance with applicable

federal law. In that event, the Permittee will be liable to the NPS for all of its costs in disposing of the facilities or equipment and restoring the Permitted Area.

- (19) Before the Permit's effective date the Permittee must file with the NPS a performance bond payable to the NPS, issued by a surety satisfactory to the NPS, to guarantee its compliance with all terms and conditions of this Permit and with all applicable laws and regulations. The bond for this Permit must be in the amount of \$_____ and must be filed with _____.
- (20) The Permittee must procure and maintain in force and effect during the term of this Permit commercial general liability insurance to protect against claims arising out of the acts or omissions of the Permittee or its officers, employees, agents, or representatives while conducting the activities authorized by this Permit. The insurance policy must provide coverage for discharges or escapes of pollutants or contaminants into the environment, including sudden or accidental discharges or escapes. The policy must be in the minimum amount of \$_____ per occurrence and \$_____ aggregate; must be issued by a company duly licensed to do business in **[insert name of state where park is located]**; and must name the United States of America as an additional insured. Before the NPS Regional Director executes this Permit, the Permittee must provide the NPS with a copy of its Certificate of Insurance showing the required coverage.
- (21) In accordance with applicable law, including the Park System Resource Protection Act, 54 U.S.C. §§ 100721-100725, the Permittee will be responsible for any damage to or destruction of Park resources resulting from the Permittee's activities that are not reasonably inherent in the use of the Permitted Area authorized by this Permit. This Permit is not a defense to liability under 54 U.S.C. § 100722(c)(3) for any activity not expressly authorized by this Permit.
- (22) The Permittee will indemnify and hold harmless the United States and its officers, employees, agents, and representatives from and against all liability of any sort whatsoever arising out of the Permittee's activities under this Permit. This agreement to indemnify and hold harmless from and against all liability includes liability under federal or state environmental laws, including the Comprehensive Environmental Response, Compensation, and Restoration Act, as amended; the Resource Conservation and Recovery Act, as amended; and what is commonly known as the Clean Water Act, as amended. This agreement to indemnify and hold harmless will survive the Permit's termination or expiration.
- (23) In accordance with applicable federal law the Permittee will not discriminate against any person because of race, color, religion, sex, or national origin.
- (24) Nothing in this Permit obligates the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated by the NPS for the purpose of this

Permit, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

[If this permit is for a communications facility as defined by the Mobile Now Act (47 U.S.C. § 1455(d)(1)), the following terms must be included in the final permit]

- (25) Use of wireless communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or National Telecommunications and Information Administration (NTIA) authorization/license (if required), and the operation of the equipment in strict compliance with applicable requirements of FCC or NTIA. A copy of each applicable license or authorization must be maintained at all times by the Permittee for each transmitter being operated. The Permittee must provide the Superintendent, when requested, with current copies of all licenses for equipment in or on facilities covered by this Permit.
- (26) Permittee must, at its sole cost and expense, take all necessary actions to comply with all applicable FCC radio frequency (RF) exposure regulations and requirements, and must take reasonable precautions so that neither workers nor the public are subject to RF exposures above the FCC specific levels.
- (27) The provisions of the United States Code set forth at 18 U.S.C. § 431 (Contracts by Member of Congress) and 41 U.S.C. § 6306 (Prohibition on Members of Congress making contracts with the Federal Government), as such provisions may be revised from time to time, are hereby incorporated in this Permit by this reference, as if set forth in full.

[Add any additional park-specific conditions numbered sequentially below.]

By signing this Permit on the date indicated below, the Permittee's authorized representative acknowledges that he or she has read and understands all of the Permit's terms and conditions, agrees that the Permittee will abide by all of the Permit's terms and conditions, and requests that the NPS Regional Director execute the Permit and issue it to the Permittee.

[Insert Permittee's legal name.]

(Signature)

Printed name

Title

Date

By signing this Permit on the date indicated below, the NPS Regional Director hereby executes it and issues it to the Permittee.

(Signature)
Regional Director, **[insert name of region]**
National Park Service
United States Department of the Interior

Date

Exhibit A

[Insert map or drawing.]