

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 20, 2011 AGENDA**

| Subject: | Type: | Submitted By: |
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| COMMUNICATIONS CABLE & FACILITIES AGREEMENT BETWEEN CITY OF LA VISTA AND UNITE PRIVATE NETWORKS, LLC | ◆ RESOLUTION ORDINANCE RECEIVE/FILE | JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR |

SYNOPSIS

A resolution has been prepared authorizing the Mayor and City Clerk to enter into an Agreement with Unite Private Networks, LLC (Unite) for the use of public rights-of-way within the City limits for installation of communications facilities.

FISCAL IMPACT

An annual rental fee of Two Dollars (\$2.00) per lineal foot for the use and occupancy of the space within the public rights-of-way will be collected. At such time as Unite provides service to customers located within the City, the Occupation Tax as set forth in the City's Master Fee Schedule will be collected.

RECOMMENDATION

Approval, subject to the final form of Agreement being satisfactory to the City Attorney and City Administrator.

BACKGROUND

Unite Private Networks, LLC, is registered with the State of Nebraska as a Competitive Local Exchange Carrier and is a current member of the Nebraska Public Service Commission. As such, they are entitled to request permission to use public rights-of-way. Unite is not proposing to serve any customers within the City at this time but plan to do so in the future. They want to build a connection from their Omaha installation to their Hwy. 370 installation as part of an overall plan to build a large fiber optic ring through Omaha, Millard, La Vista, Papillion, and Bellevue. Their plan currently calls for installing a fiber optic cable partially inside OPPD conduits and partially inside new conduits to be installed in 114th Street, Giles Road (from 114th to 108th Streets) and in 108th Street from Giles Road to Harrison Street. This agreement would pertain to those sections of conduit with fiber optic cable to be installed and owned by Unite, within said streets to the extent of La Vista's corporate limits. Those portions of the installation being placed in facilities owned by OPPD would be not subject to this agreement.

Unite has delivered plans to the Public Works Department for review and issuance of a permit to proceed with installation. It was determined however that an agreement setting forth conditions for this proposed installation was necessary. Unite identified the need to proceed with the installation prior to the onset of frozen ground conditions which resulted in staff issuing a temporary permit to allow the installation of conduits but not the installation of optical fibers to convey signals until an agreement has been executed by both parties.

The recommended agreement is similar in format to agreements entered into by surrounding communities with Unite. The agreement provides for the installation of 12 optical fibers for use by the City subject to certain terms and conditions as set forth in the agreement. The proposed agreement also includes a Statement of Policy

and Standard Specifications for Communication Facilities on City Property which will apply to other similar agreements for installation of communication facilities. The City Attorney has reviewed the agreement and recommended revisions were made sent to Unite Private Networks, LLC for consideration.

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH UNITE PRIVATE NETWORKS, LLC FOR USE OF PUBLIC RIGHT-OF-WAY WITHIN THE CITY LIMITS FOR INSTALLATION OF COMMUNICATIONS FACILITIES

WHEREAS, the Mayor and City Council find it necessary to have an agreement setting forth conditions for this proposed installation; and

WHEREAS, Unite Private Networks, LLC (Unite), is registered with the State of Nebraska as a Competitive Local Exchange Carrier; and

WHEREAS, this agreement would entitle Unite to request permission to use public right-of ways from the City of La Vista; and

WHEREAS, the agreement includes a Statement of Policy and Standard Specifications for Communication Facilities on City Property; and

WHEREAS, the agreement provides for the installation of 12 optical fibers by Unite for use by the City subject to certain terms and conditions as set forth in the agreement;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska, that the Mayor and City Clerk are hereby authorized to execute an agreement with Unite Private Networks, LLC for use of public right-of-way within the city limits for installation of communications facilities subject to the final form of agreement being satisfactory to the City Attorney and City Administrator..

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2011

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

COMMUNICATIONS CABLE AND FACILITIES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date") by and between UNITE PRIVATE NETWORKS, LLC, a Missouri Limited Liability Company, whose address for notice purposes under this Agreement is P.O. Box 25526, Kansas City, Missouri 64119 ("PERMITTEE") and THE CITY OF LA VISTA, NEBRASKA, a municipal corporation organized under the laws of the State of Nebraska ("CITY").

WHEREAS, CITY is organized and existing under and by virtue of the laws of the State of Nebraska and has control and authority over the use and occupation of the public rights of way within its corporate boundaries;

WHEREAS, PERMITTEE desires to install, operate and maintain communications facilities upon, under and within certain streets and public rights of way within the corporate boundaries of CITY;

WHEREAS, CITY is authorized to grant leases and permits to occupy public rights of way; and

WHEREAS, PERMITTEE has agreed to make available portions of its proposed communications facilities to CITY for certain compensation as set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

1. **PERMIT.** In consideration of and upon the terms and conditions set forth in this Agreement and those set forth in the "Statement of Policy and Standard Specifications for Communications Facilities on City Property (Revised December, 2011)," attached hereto as "EXHIBIT A" and incorporated herein by this reference, CITY hereby agrees to grant and give to PERMITTEE a limited and non-exclusive permit to survey and construct, subsequent to acquisition of all necessary permits and payment of all applicable fees, and to then install, operate, inspect, maintain, protect, repair, alter, replace or remove PERMITTEE'S communications facilities "Communications Facilities"), as the Communications Facilities are described on documents to be added to this Agreement from time to time, which documents are described in Paragraph 2 below and shall collectively be known as "EXHIBIT B," each of which shall be considered a part hereof after being dated and signed by authorized representatives of both parties, and attached hereto by CITY. The Communications Facilities shall consist of existing or future underground conduits, cables, wires, splicing boxes, and appropriate appurtenances located on, above and/or beneath the surface of the streets, alleys, sidewalks or other public grounds within CITY, but only as such Communications Facilities and such streets, alleys, sidewalks or other public grounds are described in EXHIBIT B. PERMITTEE shall not install its Communication Facilities on, above, or beneath any street, alley, sidewalk or other

public ground except as specifically described in Exhibit B. The permit contemplated by this paragraph shall include the right of reasonable access to the Communications Facilities.

2. **PERMITS; PLANS AND SPECIFICATIONS.** PERMITTEE shall secure all permits required to be issued by the appropriate officials of CITY in connection with the installation of the Communications Facilities. The Communications Facilities shall be laid substantially in accordance with the plans and specifications submitted to and approved by CITY and in conformity with any and all specific conditions as may be set forth by CITY from time to time in the permits granted to PERMITTEE by CITY pursuant hereto, copies of which permits, plans, and specifications shall be kept on file at the Public Works Department of CITY.

3. **BINDING EFFECT; ASSIGNMENTS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party hereto shall assign or otherwise convey any of its rights, title, or interest under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

4. **CONDITIONS PRECEDENT TO AGREEMENT.** This Agreement shall not be effective until it has been approved by resolution of the City Council of CITY and signed by its Mayor and an authorized representative of PERMITTEE.

5. **NON-DISCRIMINATION.** PERMITTEE, and each and every contractor employed, used or hired by PERMITTEE to plan, construct, repair or maintain the Communications Facilities, shall not unlawfully discriminate or permit discrimination at any time in violation of state or federal law on account of race, color, religion, sex, age, national origin, or disability, nor discriminate in any other respect prohibited by federal or state law in the performance of work or the performance of other activities permitted by this Agreement,

6. **CONFLICT OF INTEREST.** No elected official or officer of the CITY may have an interest in any CITY contract contrary to the provisions of Section 33.57 of the La Vista Municipal Code. If a person or organization enters into such an agreement with the CITY with knowledge of such a violation, such agreement may be voidable.

7. **CITY FIBERS.** PERMITTEE shall install, as part of its initial installation of fibers in the Communications Facilities, twelve (12) optical fibers for the exclusive use and benefit of CITY ("City Fibers"). The following provisions are applicable regarding the City Fibers:

- (A) In consideration of the provision and installation of the City Fibers by PERMITTEE, CITY will pay PERMITTEE ____ cents per lineal foot of City Fibers provided and installed, based on the length of conduit in which the City Fibers are installed. (Twelve optical fibers installed in one foot of conduit as City Fibers shall entitle PERMITTEE to payment for one foot, not payment for twelve feet.) Payment for the installation and use of City Fibers by CITY will be solely and exclusively made in the form of credits allowed to PERMITTEE against occupation

taxes owed or hereafter owed by PERMITTEE to CITY as described in Section 9(C) of this Agreement.

- (B) At such time as CITY may request, PERMITTEE shall connect, and allow CITY to connect, the City Fibers to other portions of the Communications Facilities as may be required to enable the Dark Fibers to function and operate as optical fibers within the Communications Facilities.
- (C) CITY may sell, assign or lease "dark fiber" capacity on the City Fibers to other political subdivisions or other public entities affiliated with the CITY. CITY shall promptly notify PERMITTEE of any such sales, assignments or leases. CITY may not sell, assign or lease same to non-public third parties.
- (D) CITY shall be permitted to connect and use the City Fibers for the use and benefit of:
 - (1) CITY, and any and all of CITY'S elected or appointed bodies, departments, boards, and commissions,
 - (2) any and all departments, agencies, and other organizations operated jointly by CITY and Sarpy County, Nebraska, and
 - (3) other departments, agencies, organizations, enterprises, and affiliated entities established or created in whole or in part by the Municipal Code of CITY, by ordinance enacted or resolution adopted by the City Council of CITY, or by any interlocal agreement to which CITY is a party, which perform, in whole or in part, any authorized function of city government of CITY, in either CITY'S proprietary or governmental capacity.
- (E) PERMITTEE, at its own cost, shall maintain and repair the City Fibers so as to assure continuing conformity of the City Fibers with PERMITTEE'S operating specifications. CITY may repair and maintain the City Fibers upon written permission of PERMITTEE, or upon failure of PERMITTEE to promptly repair the City Fibers on request of CITY.

8. **WAIVER OF CITY LIABILITY.** PERMITTEE acknowledges and agrees that CITY makes no representation to PERMITTEE as to the suitability of CITY right-of-way or property for the purposes intended by PERMITTEE. PERMITTEE hereby waives relinquishes and releases CITY from any and all loss, claim or liability arising out of PERMITTEE'S use of CITY right-of-way or property or arising out of PERMITTEE'S exercise of rights or authority under this Agreement and under any permit issued pursuant to this Agreement.

9. **SALES, USE, AND OCCUPATION TAXES.** PERMITTEE shall pay sales, use and occupation taxes as follows:

- (A) PERMITTEE shall obtain a sales and use tax license from CITY and comply with all conditions, requirements, and other provisions of such license.
- (B) To the extent PERMITTEE'S sales of communications services and sales and leases of optical fibers to third parties are subject to sales and/or use taxes imposed by law, PERMITTEE shall collect such taxes from such third parties and promptly remit them to the appropriate tax collection and revenue authority.
- (C) To the extent PERMITTEE provides communication services, fiber rental, or fiber use to users or subscribers, PERMITTEE shall pay to CITY an occupation tax in an amount equal to five percent (5%) of all gross revenue PERMITTEE has collected as a result of PERMITTEE'S use of the CITY'S public rights-of-way or public grounds to provide such communication services, fiber rental, or fiber use to users or subscribers within the corporate limits of the City of La Vista. Such tax shall be collected in accordance with La Vista Municipal Code Chapter 113, Section 113.07, but PERMITTEE shall be entitled to a credit or credits against such tax for any amount due from CITY under Section 7(A) of this Agreement. PERMITTEE shall file at least semi-annually, or at such different times as CITY shall direct, a statement of such gross receipts from subscribers and users within the CITY, in such form as is approved or specified by CITY.

10. **INDEMNITY.** PERMITTEE agrees to indemnify and save harmless CITY, its officers and employees, from and against any and all loss or damage whatsoever to CITY property or to property of others that arises out of or on account of any construction, maintenance, or other activities of PERMITTEE, or any agent of PERMITTEE, pursuant to this Agreement and any permit issued pursuant to this Agreement. PERMITTEE further agrees to indemnify and save harmless CITY, its officers and employees, from and against any and all loss or liability arising from or out of claims of any person suffering, or claiming to have suffered, personal injury, loss or damage that arises out of or on account of any construction, maintenance, or other activities of PERMITTEE, or any agent of PERMITTEE, pursuant to this Agreement and any permit issued pursuant to this Agreement.

11. **RESERVATIONS OF RIGHTS.** The parties expressly reserve any rights either of them may have under state or federal law concerning the subject matter of this Agreement and further agree that by execution and performance of this Agreement, neither party shall be deemed to have waived any of such rights.

12. **INDEPENDENT CONTRACTOR.** PERMITTEE is entering into this Agreement as an independent contractor engaged in PERMITTEE'S own work and business activities. PERMITTEE is not authorized by this Agreement to act as an employee or servant of CITY.

13. **TERM OF AGREEMENT; TERMINATION.** This Agreement shall continue in force and effect for a period of ten (10) years from its Effective Date specified above, and thereafter

from year to year, unless terminated by either party by giving written notice of termination not less than ninety (90) days prior to the end of the initial ten-year term or any one-year renewal period, as the case may be. At its option, the CITY may also terminate this Agreement for any reason that the permit is terminated or may be terminated by the CITY under Exhibit A.

14. **ENTIRE AGREEMENT.** This Agreement, including the permits granted pursuant to this Agreement and the Exhibits attached to this Agreement, encompasses the entire agreement between the parties. No representations were made or relied upon by either party in executing this Agreement other than those expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms of this Agreement, unless done in writing and signed by authorized representatives of both of the respective parties hereto.

CITY OF LA VISTA, NEBRASKA,

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

ACCEPTED AND AGREED TO:
UNITE PRIVATE NETWORKS, LLC

By: _____
Title: _____
Date: _____

Attest: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

City Attorney

STATEMENT OF POLICY AND STANDARD SPECIFICATIONS FOR COMMUNICATIONS FACILITIES ON CITY PROPERTY

(Revised December, 2011)

As used in this document, "Permittee" includes the permittee issued a permit to which the statement of policy and specifications set forth in this document are applicable by agreement between the City of La Vista, Nebraska and the permittee, as well as any successor in interest and/or assignee of such permittee.

SECTION A – PERMIT REQUIRED

No person shall use any space above, on, or beneath the surface of any street, alley, sidewalk or other public ground within the City of La Vista for the installation, operation and maintenance of any underground fiber optic cable, coaxial cable, or any other communication cable, line, facility, or appurtenance, unless such person has received a permit therefor, granted by agreement approved by resolution of the City Council or as otherwise provided herein. This policy and these specifications shall not apply to any cable installed or operated by the holder of any City franchise for the provision of telephone, cable television, or communications service to the inhabitants of the City as described in such franchise.

SECTION B – APPLICATION FOR PERMIT

(1) Application for such permit shall be made to the Permits and Inspection Division of the Community Development Department of the City, and such application shall be in writing, stating specifically the space desired, its length, breadth and depth, the streets alleys, sidewalks or other public spaces intended to be used, the use intended to be made thereof, a description of the user(s) if the facility is not to be available to the general public, a description of all users if any conduit is to be shared by a number of users, and the carrying capacity and diameter of the cable or other facilities being installed. The Permits and Inspection Division shall forward the application to the Public Works Department for review and comment. The Permits and Inspection Division and/or the Public Works Department may request such additional information as they deem appropriate for their determination or that of the City Council with reference to such application. All such applications and requests for which there is no agreement currently in effect conforming to this statement of policy and these specifications shall be referred to the City Council for approval of an agreement by resolution prior to the granting of a permit. Other permits (for which such an agreement is currently in effect) may be granted by the Permits and Inspection Division with the approval of the Public Works Department.

(2) Following initial application and discussions with the Permits and Inspection Division and/or the Public Works Department concerning the placement of such cable, line, or facility, and related appurtenances, the applicant shall supply accurate drawings under seal of a Nebraska-licensed professional engineer and produced to a scale specified by the City representatives during discussion and review of the initial application. The plans shall include a

plan and profile of the proposed route, with right of way lines and pavement lines shown. Such plans must show typical sections for pavement cuts and crossings, with specific details for any conflicts with other utility structures and conduits.

(3) Within thirty days after completion of the construction and installation work, the Permittee shall provide as-built construction drawings, signed and certified by a Nebraska-licensed professional engineer, to the Public Works Department. In that connection, one set of paper prints shall be provided, along with a digital copy on electronic storage media and with each sheet being a .pdf file. In addition, ArcGIS or AutoCAD files shall be provided to the Public Works Department on electronic storage media so that city-wide maps may be kept current. Updated route maps, required drawings, and as-built construction drawings must be provided to the Public Works Department whenever a change is made to the approved cable, line, or facility, and related appurtenances, placement.

SECTION C – CONSTRUCTION SPECIFICATIONS

(1) The work shall be constructed in accordance with plans and specifications approved by the Public Works Department, which approval shall be granted in a competitively neutral and non-discriminatory manner. All excavations and pavement replacements in public streets shall comply with Chapter 93 of the La Vista Municipal Code. Where cable or conduit is located beneath the pavement of major traffic streets and arterial streets, or as directed in writing by the Public Works Department, the minimum depth from the top of the cable or conduit to the top surface of the street shall be not less than thirty inches. Cable or conduit buried beneath residential streets shall have a minimum depth below the top surface of the street of twenty-four inches, unless a greater minimum depth is directed by the Public Works Department in writing. In no instance shall cable or conduit be buried to a depth of less than twenty-four inches. Pull boxes and other appurtenances shallower than the depths above specified shall be clearly shown on the completed plans and as-built construction drawings covering the installation work.

(2) All land surfaces and all pavement shall be restored to the same or similar conditions existing prior to Permittee's construction. All established lawns which have been disturbed by the installation shall be re-sodded and all other earthen surfaces shall be seeded unless otherwise specified in the permit.

(3) All cable buried beneath public streets must be encased in a protective sheath strong enough to avoid damage from the first accidental contact with hand tools. All pavement cuts must be completed in accord with current City ordinances and specifications.

SECTION D – BOND, INSURANCE AND PUBLIC LIABILITY

(1) Prior to commencing any construction or installation activity under a permit, Permittee shall file with the City Engineer a continuing performance bond guaranteeing Permittee's performance of the agreement and compliance with the conditions of the agreement and of the permit. Such bond shall be in the sum of Fifty Thousand dollars (\$50,000.00), or if so specified by the Public Works Director of the City, such greater sum as may be reasonably proportionate to the size and scope of the work to be performed within the City's rights of way and the potential loss(es) or damage(s) the City may sustain if Permittee fails to perform the

agreement and comply with the conditions of the agreement and of the permit. Such bond shall be conditioned that Permittee:

- (A) shall faithfully perform the agreement and comply with all conditions of the agreement and of the permit;
- (B) shall save and keep the City free and harmless from any and all loss, liability and damage, and claims for damages, arising from or out of the use of the space subject to the permit or arising from or out of Permittee's activities and operations under the agreement and permit, except such claims as may arise based solely upon the City's own gross negligence or intentional misconduct;
- (C) shall conduct operations and activities under the agreement and permit such that the street(s), alley(s), sidewalk(s) and other public ground(s) affected by Permittee's operations under the agreement and permit shall at all times after the completion of such operations be safe for public use;
- (D) shall save and keep the City free and harmless from any and all loss, liability or damages, and claims for damages, arising from or growing out of the granting of such permit, except such claims as may arise based solely upon the City's own gross negligence or intentional misconduct;
- (E) will remove, at the conclusion of the term of the agreement and at Permittee's own cost, any cable, conduit, equipment, and other facility buried or installed by Permittee, to the extent such removal is requested by the City, at the sole expense of Permittee or its successors or assigns, and after such removal restore all land surfaces and all pavement as specified more fully in SECTION C(2), above;
- (F) shall faithfully comply with and observe all of the terms and conditions of this statement of policy and of these specifications, and of the conditions and provisions of the La Vista Municipal Code; and
- (G) shall promptly and fully pay, when due, any amounts coming due to the City or others under the agreement or permit.

Such bond by its terms shall remain in effect through the end of the term of the agreement or until Permittee is no longer operating its telecommunications facilities within the City, whichever is later. The bond shall be written by a surety company or companies authorized to transact a surety business in Nebraska, and the bond and surety(ies) must be approved by the City Engineer before the permit shall become effective. The Permittee and the owners (from time to time) of the permitted facility shall be jointly and severally liable to the City for the performance of all of the conditions of the bond. Whenever the City Engineer shall be of the opinion that the sum or the surety on the bond given in connection with the permit has become insufficient and shall so declare in writing sent by regular U.S. Mail to Permittee or his, her or its successor or assign, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City Engineer.

(2) The Permittee, or his, her or its successor or assign, shall at all times have in full force and effect, and provide to the City Engineer, certificates of insurance demonstrating insurance coverages having limits of liability of not less than the following amounts:

- (A) Comprehensive General Liability Insurance: Limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City of La Vista shall be

named as an Additional Insured on such coverages on a primary and non-contributory basis.

- (B) Automobile Liability Insurance: Limits of not less than \$2,000,000 Combined Single Limit (CSL) per accident, with coverage applying to and regarding all Owned, Hired, and Non-Owned motor vehicles.
- (C) Workers' Compensation Insurance: Limits: Statutory coverage for each State in which the work and any portion of the work is located or performed.
- (D) Employer's Liability Insurance: Limits: \$100,000 each Accident; \$100,000 Disease (per person); \$500,000 Disease (policy limit).

All such policies and certificates of insurance shall be issued by companies authorized to issue such policies in the State of Nebraska, shall be subject to approval by the City Engineer prior to the commencement of any construction or installation activity under a permit, and shall provide that the policy shall not be cancelled or terminated except upon filing by the insurer with the City Engineer a written notice of cancellation or termination at least thirty (30) days' prior to the effective date of such cancellation or termination. Any cancellation, termination, or lapse of a required insurance coverage will automatically revoke any permit issued, but the Director of Public Works may reinstate such permit if satisfactory certificate(s) of insurance is/are provided within thirty days.

SECTION E – INTERFERENCE WITH OTHER PUBLIC FACILITIES, RELOCATION, IDENTIFICATION OF COMMUNICATIONS CABLE

(1) No person, whether permitted under this document or otherwise, shall ever use the space above, on, or beneath any street, alley, sidewalk or public ground of the City in such manner as to interfere with any traffic control or energy cable, sewer, gas or water installation, or any other public facility or utility lawfully located above, on, or beneath such street, alley, sidewalk or other public space, except upon consent of the City specifically granted in the permit. Whenever any applicant or Permittee is given permission to relocate any existing public facility, such relocation shall be entirely at the cost and expense of the applicant or Permittee. All such relocation work shall be subject to the approval of the City of La Vista or other public entity controlling such public facility or utility, and all such work shall be done promptly in accordance with the directions of the Public Works Department so as to minimize the interruption of the public's use of such facilities.

(2) All work undertaken by the applicant or Permittee that requires inspection by the City, as specified by law or ordinance or in the permit or agreement, shall be performed subject to the requirement that the City be fully reimbursed for its reasonable and documented inspection costs, whether the same are incurred during the initial installation, during the relocation of Permittee's facilities or facilities belonging to the City or any other utility service, or during maintenance or repair work by Permittee.

(3) All permits governed by these specifications are granted subject to the express requirement and condition that whenever the City of La Vista, the State of Nebraska, the County of Sarpy, any other public body, Omaha Public Power District, Metropolitan Utilities District, any other publicly-owned entity, Black Hills Energy, or any holder of any franchise from the

City, needs or desires to perform work in proximity to the facilities of Permittee, Permittee shall relocate or otherwise safeguard its facilities within a reasonable time, not to exceed sixty (60) days, after written request for the same, in order to reasonably accommodate such work. If Permittee fails to relocate or safeguard same within a reasonable time following such request, then the City of La Vista shall have the right to relocate or allow relocation of Permittee's facility(ies) and to assess and collect from Permittee the reasonable and documented cost of such relocation.

(4) At its own cost, Permittee shall appoint a local agent, who shall be available on a twenty-four hours per day, seven days per week basis, to provide to the City, any public entity, or any other person permitted to do work in a City right-of-way, detailed and accurate information concerning the location (whether in plan, section or profile, or any combination of the same) of any of Permittee's cable, lines, appurtenances, or other facilities. This requirement may be satisfied by the Permittee's utilization of a local utility locating service maintained by a third party or any other local agency able to provide such information. Permittee shall be a member of the Underground Digger's Hotline system.

(5) Permittee shall at all times be solely responsible for injuries and damage to its cable, lines, appurtenances and other facilities, caused by any party due to any inaccuracy in the information provided by Permittee or its agent(s) with respect to the location of such cable, lines, appurtenances, or other facilities. The City of La Vista and other parties working on public property shall be responsible for damage to the Permittee's cable, lines, appurtenances, and other facilities only if and to the extent that such damage results from intentional damage or willful disregard of the cable, lines, appurtenances or other facilities of the Permittee.

SECTION F – REVOCATION OF PERMIT; REMOVAL OF FACILITIES

If Permittee

- (1) fails to make any required payment to the City within thirty (30) days after the due date, or
- (2) fails or neglects to comply with any material provision of this statement of policy, these specifications, the permit, the agreement, or any provision of the La Vista Municipal Code applicable to the permit or use and occupancy of City right-of-way,

and if in either event Permittee fails to cure such breach within thirty (30) days after the City Engineer has mailed written notice of such breach to Permittee, then the City Counsel may revoke the permit issued to Permittee.

(2) Upon revocation of the permit, Permittee shall forthwith either remove or abandon in place, as directed by the City Engineer, the cable, lines, facilities, and/or appurtenances for which the permit was granted; *provided, however*, that cable buried directly (i.e., not buried in conduit) may be abandoned in place at the option of Permittee. If, pursuant to the foregoing, the City Engineer directs Permittee to remove Permittee's cable, lines, facilities, and/or appurtenances, then within a reasonable time and at its own cost, Permittee shall remove as directed any cable, lines, facilities, and/or appurtenances buried or installed by Permittee, and after such removal Permittee shall restore all land surfaces and all pavement as specified more fully in SECTION C(2), above. Cable, lines, facilities, and/or appurtenances that are not

removed, with the permission of or at the direction of the City Engineer, shall become the property of the City upon the City Engineer's certification that the Permittee has complied with all of the City Engineer's directives concerning removal or abandonment in place of the specific segment of cable, lines, facilities, and/or appurtenances involved. If Permittee fails or refuses to conclude removal or abandonment in place as directed by the City, and restoration as specified more fully in SECTION C(2), within six (6) months after revocation of the permit under this section, then the City may cause such work to be performed and the cost of such work shall be paid by Permittee to the City on demand, and until paid such cost shall be a lien against and upon all cable, lines, facilities, appurtenances, and other property of the Permittee located within the corporate limits of the City.

(3) If the City Council determines that right-of-way or other public ground space for which the permit was granted is needed for other public use and that no relocation within the specific right-of-way or public ground is available as a reasonably feasible alternative space, then Permittee's rights under the permit may be transferred, by co-operation between the City and the Permittee, and to the extent reasonably possible, to another specific nearby right-of-way. Such relocation work shall be accomplished by the permit holder at its own cost within the time frame specified in Section E(3), above.

SECTION G – RENTAL FEE FOR SPACE FOR NON-PUBLIC USE

(1) When Permittee is making private use of the installed cable, lines, facilities, and appurtenances, Permittee shall pay to the City an annual rental for the use and occupancy of the space beneath public streets, alleys, sidewalks and other public grounds occupied by such cable, lines, facilities, and appurtenances, which rental shall be Two Dollars (\$2.00) per lineal foot of space occupied underneath the public streets, alleys, sidewalks or other public grounds. So as to prevent expense to the public for such private use of right-of-way, and to fully compensate the public for all regulatory expenses resulting from such use, and in addition to Permittee's obligation to pay for all inspection, relocation and facility location costs as specified above, Permittee shall promptly pay the City for all actual direct and indirect costs incurred by the City in providing barricading, traffic detour, warning signing, and cautionary flagging not actually performed or provided by Permittee, and for all other actual direct and indirect expense incurred by the City in regulating Permittee's use of public right-of-way pursuant to the permit and the agreement.

(2) All rental payments becoming due under this document shall be made to the City of La Vista and shall be due and payable, in advance, on the first day of January of each year; *provided, however*, if the permit is issued after the first day of January, the amount of the initial rental payment shall be prorated from the date such permit is issued through December 31 of that same calendar year, and such initial rental payment shall be due and payable within ten days after the prorated rental amount due is certified to Permittee by the City Engineer. Any annual rental due (other than the rental due for any initial partial year) shall be due and payable on the first day of January of each year. All rental not paid when due shall bear interest at the maximum rate of interest allowable by law in the State of Nebraska under such circumstances, or at any lesser rate of interest that may be specified in the permit.

SECTION H – COSTS TO BE PAID BY PUBLIC USE PROVIDERS

If the Permittee is a communications company offering communication services to the general public for a fee and using the public space for such purposes, the rental stated in Section G above shall not apply. In lieu thereof, the City's occupation tax per Chapter 113 of the La Vista Municipal Code shall apply. Communication services shall be defined as services provided by the carrier that accommodate and enable the transmission, between or among points specified by the subscriber or user, of information or data of the subscriber's or user's choosing, without a change in the form or content of the information sent or received. In addition to the occupation tax, Permittee shall promptly pay the City for all actual direct and indirect costs incurred by the City in providing barricading, traffic detour, warning signing, and cautionary flagging not actually performed or provided by Permittee, and for all other actual direct and indirect expense incurred by the City in regulating Permittee's use of public right-of-way pursuant to the permit and the agreement.

SECTION I – CONFLICTS WITH PERMIT OR AGREEMENT

All terms and provisions of the agreement between the City and Permittee, of the permit issued to Permittee, and of this document, shall be enforced and applicable to the maximum extent possible. If, however, there is any conflict between or among such terms and provisions, then (1) the terms and provisions of the permit shall control over any conflicting terms in this document, and (2) the terms and provisions of the agreement shall control over any conflicting terms in the permit and/or in this document.