

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 7, 2019 AGENDA

Subject:	Type:	Submitted By:
MASTER AGREEMENT - COMMUNICATIONS CABLE & FACILITIES BETWEEN CITY OF LA VISTA AND MCIMETRO ACCESS TRANSMISSION	ORDINANCE ♦ RESOLUTION RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER

SYNOPSIS

A resolution has been prepared authorizing the Mayor and City Clerk to enter into a Master Agreement with MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services for use of public rights-of-way within the City limits for installation of certain communications facilities.

FISCAL IMPACT

The Agreement provides for collection of the Occupation Tax as set forth in the City's Master Fee Schedule or annual rental fee of Two Dollars (\$2.00) per lineal foot for use and occupancy of the space within the public rights-of-way, as applicable.

RECOMMENDATION

Approval

BACKGROUND

MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services is proposing to install operate and maintain certain communications facilities in City right of way. MCImetro advises that it only will seek to install below ground facilities pursuant to this Agreement to serve existing structures; installation of poles or other above ground structures or equipment will not be sought or permitted pursuant to this Agreement. Proposed plans will be submitted to Public Works for review and approval, or modification and approval, to the satisfaction of the City Engineer.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN AGREEMENT WITH MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES FOR USE OF PUBLIC RIGHTS-OF-WAY WITHIN CITY FOR INSTALLATION OF CERTAIN COMMUNICATIONS FACILITIES

WHEREAS, the Mayor and City Council find it necessary to have an agreement setting forth conditions for use of the rights-of-way within the City of La Vista, Nebraska for certain communications facilities to be proposed in plans submitted to Public Works and approved, or modified and approved, to the satisfaction of the City Engineer ("Proposed Communications Facilities"). Only below ground facilities to serve existing facilities will be proposed under this agreement; no poles or other above ground structures will be proposed; and

WHEREAS a Master Agreement for Communications Cable and Facilities in Public Rights-of Way is presented with the Resolution and incorporated herein by reference (the "Agreement"). The Agreement would grant MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services permission to use public rights-of-way in the City of La Vista for the Proposed Communications Facilities. The Agreement includes a Statement of Policy and Standard Specifications for Communication Cable and Facilities in Public Rights-of-Way.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska, that the Agreement is hereby approved and the Mayor and City Clerk are hereby authorized to execute the Agreement.

PASSED AND APPROVED THIS 7TH DAY OF MAY, 2019.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

MASTER AGREEMENT FOR COMMUNICATIONS CABLE AND FACILITIES IN PUBLIC RIGHTS-OF-WAY

THIS MASTER AGREEMENT FOR COMMUNICATIONS CABLE AND FACILITIES IN PUBLIC RIGHTS-OF-WAY (the "Agreement") is entered into as of the _____ day of _____, 2019 (the "Effective Date"), by and between City of La Vista, Nebraska, a Municipal Corporation (hereinafter referred to as "CITY"), and MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware limited liability company authorized to do business in Nebraska as a telecommunication services provider (hereinafter referred to as "PERMITTEE") (collectively, the "Parties"). This Agreement shall not be effective until it is approved by resolution of the City Council of CITY and signed by both Parties.

WHEREAS, CITY is organized and existing under and by virtue of the laws of the State of Nebraska and possesses plenary power, control and authority over the use and occupation of the public Rights-of-way within its corporate boundaries; and

WHEREAS, PERMITTEE desires to install, operate and maintain a communications system or other communications facilities described in or determined in accordance with this Agreement upon, above, under or within certain streets and public Rights-of-way within the corporate boundaries of CITY, which may include buried wires and fiber optic cable and associated facilities to enable the provision of telecommunication or communication services (the "System"); and

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

WHEREAS, CITY and PERMITTEE have agreed to be bound by the terms and conditions set forth herein which shall govern PERMITTEE's use of the public Rights-of-way;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and mutual promises set forth herein, the Parties agree as follows:

Article I - Definitions

As used in this Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this Agreement, the word "shall" is mandatory, and the word "may" is permissive. Words not defined in this Article I or otherwise in this Agreement shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this Agreement.

A. "Affiliate" or "parent" of PERMITTEE means any person or entity that directly or indirectly owns or controls, or is owned or controlled by, or is under common control with, a Party to this Agreement.

B. "Cable" shall mean all fiber optic and/or other cable now or hereafter owned, utilized or controlled by PERMITTEE located within the public Rights-of-way of CITY's

Jurisdiction as now or hereafter constituted.

C. "Communications Facilities" means Facilities as defined in Article I(D) below and described in Article II(A) below, which Facilities shall be subject to the terms and conditions of this Agreement.

D. "Facilities" means all physical components of the System located within the Jurisdiction, including, without limitation, Cables, wires, pipes, underground conduits, ducts, equipment cabinet, manholes, hand holes, vaults, fiber optic cables and devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.

E. "Gross Revenue" shall mean any and all compensation and other considerations collected or received from users or subscribers or in any manner gained or derived by PERMITTEE as a result of PERMITTEE's use of CITY's public Rights-of-way or public grounds to provide communication services, fiber rental, or fiber use to users or subscribers within the corporate limits of the CITY, as it now exists or may be established hereafter, or such other amount as set by the Mayor and City Council and outlined in CITY's master fee ordinance or schedule in accordance with applicable provisions of CITY's Municipal Code. Gross Revenue shall not include: (i) any revenue not actually received even if billed, such as bad debt, (ii) revenues that PERMITTEE has received from another telecommunications provider and upon which the other telecommunications provider has paid or will pay to CITY a tax, franchise fee or other fee such as for use or occupation of CITY's public Rights-of-way, (iii) revenues received by PERMITTEE for communication services specifically for internet access to the extent that excluding such revenues is required by applicable federal or state law, or any similarly situated competitor of PERMITTEE is allowed to exclude such revenues for purposes of calculating applicable CITY occupation taxes, (iv) funds or revenues that the PERMITTEE has received from an Affiliate, corporate parent, or subsidiary and upon which an Affiliate, corporate parent, or subsidiary has paid or will pay an occupation tax, franchise fee or other fee to CITY for use or occupation of CITY's public Rights-of-way. Gross revenue earned by an Affiliate or parent of PERMITTEE that is not a party to this Agreement shall not be subject to taxes or fees pursuant to this Agreement. Any Affiliate or parent of PERMITTEE that is not a party to this Agreement and desires to enter upon or use any Rights-of-way for Facilities or other equipment or to provide communication services within CITY shall not be authorized to do so pursuant to this Agreement and instead shall be required to enter into a separate agreement with CITY, the terms and conditions of which shall control together with any applicable laws, rules or regulations.

F. "Jurisdiction" shall mean within the corporate boundaries of CITY as now or hereafter constituted.

G. "Rights-of-way" shall mean CITY streets, roads, alleys, sidewalk areas and other dedicated Rights-of-way within the Jurisdiction, together with dedicated utility easements within the Jurisdiction and easements deeded to CITY for utility purposes. This term shall not include any other property owned or leased by CITY for any other proprietary, public or municipal use.

H. "Telecommunication" or "telecommunication services" or "communication services" shall mean the transmission of signs, signals, messages, words, writings, images, data, and

sounds or information of any nature by any means, including but not limited to wire, Cables, fiber optic cables, radio, optical or electromagnetic systems, between or among points specified by PERMITTEE or its subscriber, through or by way of PERMITTEE's Facilities and System, without a change in the form or content of the signs, signals, messages, words, writings, images, data, and sounds or information as sent or received.

I. "Underlying Rights" shall mean all deeds, leases, easements, pole sharing agreements and other interests by which PERMITTEE is authorized to install, operate and maintain the System upon any real or personal property, whether public or private.

Article II – Grant of Permission to Make Reasonable Use of Public Rights-of-way

A. Grant of Limited and Non-Exclusive Use. 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**" (the "Policy"), attached hereto as "**EXHIBIT A**" and incorporated herein by this reference, as may be modified from time to time, CITY hereby agrees to grant and give to PERMITTEE a limited and non-exclusive permit to survey and construct, subsequent to PERMITTEE's acquisition of all necessary permits and payment of all applicable fees in accordance with this Agreement and all applicable law, and then to install, operate, inspect, maintain, protect, repair, alter, replace or remove PERMITTEE's telecommunication or communications Cables and Facilities ("Communications Facilities"), as the Communications Facilities are described on City-approved plans and specifications to be added to this Agreement from time to time, which documents are described in Article VI(A) 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, optic fibers, dark fibers, 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 Communications 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 by PERMITTEE.

B. Waiver of CITY Liability. PERMITTEE acknowledges and agrees that CITY makes no representation to PERMITTEE as to the suitability of CITY Rights-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's Rights-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.

C. CITY's Retained Rights. In addition to, and not in limitation of, any other rights of CITY under this Agreement or applicable law or regulations, CITY retains the following rights in regard to this Agreement:

(1) At its option, to terminate this Agreement or Rights-of-way permits for misuse, non-use or failure of PERMITTEE to comply with the provisions hereof, or for any

reason that the Agreement or any such permits may be terminated by CITY as provided under this Agreement, the Policy, or applicable laws, regulations, or rules;

(2) To use, control and regulate the use of CITY streets, roads, easements, other public places and the Rights-of-way, including without limitation the space above, upon, within and beneath the same; and

(3) To require the removal or relocation of any of the Communications Facilities from the Rights-of-way, or to allow PERMITTEE to abandon any segment of such Communications Facilities, as required or allowed under the CITY's Policy or applicable permit(s), laws, rules or regulations.

D. Construction of Permissions Granted. The permissions granted herein to make reasonable use of the Rights-of-way shall not be deemed to be a franchise, nor an exclusive license or right, and CITY reserves the right to make or grant a similar use of the Rights-of-way to any other persons or entities. Furthermore, all terms and conditions of the Policy, this Agreement, and applicable laws and regulations, if possible, shall be interpreted in a manner that is consistent and gives effect to all terms and conditions, as determined by the City Engineer or the City Engineer's designee. In the event the City Engineer or the City Engineer's designee determines that any conflict exists between or among any terms or conditions of this Agreement, the Policy, any permit, or applicable laws or regulations, such terms or conditions shall be interpreted pursuant to the following order: applicable laws, applicable regulations, the Agreement, the permit, and the Policy, as determined by the City Engineer or the City Engineer's designee. PERMITTEE, without intending to limit any other provisions of the Policy, specifically acknowledges that PERMITTEE and its Communications Facilities shall be subject to the requirements of Section G. of the Policy, relating to costs to be paid to CITY.

E. Effect of Termination. Upon termination of this Agreement, whether by expiration of the Term or by earlier termination by a Party as allowed by this Agreement, PERMITTEE's rights to use the public Rights-of-way shall cease, regardless of whether such use of the Rights-of-way was approved under this Agreement or a subsequent Rights-of-way permit, and CITY may exercise its right to require the removal or relocation of any of the Communications Facilities from the Rights-of-way pursuant to Article II(C)(3) of this Agreement, or may pursue all other remedies which may be available to CITY under this Agreement or by law.

Article III – Scope of Agreement: Providing “Cable Services” Prohibited; Installation or Attachment of Wireless Microcell or Small Cell Antennas and Components Are Beyond Scope

This Agreement confers only the right to make reasonable use of the Rights-of-way for PERMITTEE's installation and use of the Communications Facilities, as defined in Article I(C) above, and it is expressly conditioned upon the restriction that PERMITTEE shall not operate as a "cable operator" as that term is defined under federal law (47 U.S.C. § 522(5)), nor shall it provide or offer to provide "cable services" as that term is defined under federal law (47 U.S.C. §522(6)), without proper local, state, and federal authorization, as required by law.

Furthermore, this Agreement does not confer to PERMITTEE any permission or right to install any poles, towers or other structures on, within or above CITY Rights-of-way, unless such facilities are part of the Communications Facilities approved by the CITY, or to install or attach any antennas or other wireless service components or equipment to, in, on, or as part of any poles, towers, or other structures on, within, or above CITY Rights-of-way, for wireless microcell or small cell, or other wireless communication technologies (“other communication facilities”). The Parties acknowledge and agree that any proposed installation or attachment of any other communication facilities shall require the Parties to enter into a separate master agreement which is specific to the proposed use and in the form and content satisfactory to CITY; and that in accordance with such separate master agreement PERMITTEE shall be required to: (i) submit an application for permit, along with plans and specification documents, for CITY’s review and approval, (ii) and acquire all necessary permits from CITY, and submit payment of all applicable fees to CITY, for all such installations and attachments in CITY’s Rights-of-way.

Article IV - Sales and Use Tax, and Occupation Tax

PERMITTEE shall pay sales, use and occupation taxes as follows:

A. PERMITTEE shall obtain a sales and use tax license from CITY if required by applicable laws, rules, or regulations, 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 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 CITY. In no event shall PERMITTEE be subject to occupation tax or other fees in excess of any limits imposed by federal or Nebraska law. PERMITTEE shall file at least semi-annually, unless otherwise specified by the CITY’s Municipal Code or agreed upon with CITY, a statement of such Gross Receipts from subscribers and users within CITY, in such form as is approved or specified by CITY. In connection with the occupation taxes described in this paragraph, the Parties acknowledge that PERMITTEE is subject to the requirements of Section G(i) of Exhibit A.

Article V - Rent

If PERMITTEE makes use of installed Cable, line, Facilities, and appurtenances for any uses not described in IV(C) above, the occupation tax described in Section IV(C) shall not apply with respect to such uses and PERMITTEE instead shall pay to CITY an annual rental for the

use and occupancy of CITY's public Rights-of-way or other public grounds occupied by such Cable, lines, Communication Facilities and appurtenances, which rental shall be the sum of Two Dollars and No Cents (\$ 2.00) per lineal foot of Rights-of-way space occupied, as provided in Section G(ii) of Exhibit A. However in no event shall PERMITTEE be subject to both the occupation taxes described in Section IV(C) above and rent described in this Article V. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended to alter, amend, modify or expand the taxes, fees, and other charges that may lawfully be assessed on PERMITTEE's business activities under this Agreement under applicable law. Any and all taxes, fees, and other charges assessed or imposed under this Agreement shall be applied to all communications providers in a neutral and nondiscriminatory manner.

Article VI - Use of Rights-of-way

A. Permits. PERMITTEE shall secure all permits required to be issued by the appropriate officials of CITY, and pay all applicable fees, 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 by CITY.

B. One-Call System. PERMITTEE shall be a party to the Nebraska One-Call System. Facilities shall be located (thru One-Call), installed and maintained so that none of the Communications Facilities, or activities in connection with such Communications Facilities, endanger the lives, health or safety of persons, or interfere with any public or other improvements CITY or other governmental or private entities (including any storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Communications Facilities hinder or obstruct the safe and free use of the streets or other public Rights-of-way. All Communications Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Rights-of-way.

C. Schematic Plans for Facilities. With its request for this Agreement, and with any request for a permit pursuant to this Agreement, PERMITTEE shall furnish to CITY the general schematic plans for its Communications Facilities, including, route maps, depiction, sketch or renderings of its equipment boxes and structures, engineering, traffic control, and landscaping plans. Such plans and reports shall be subject to review and approval of the City Engineer or the City Engineer's designee with respect to applicable requirements imposed upon all similarly situated PERMITTEES and users of the rights of way, including the following: (1) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration, and (3) that adverse impact on the environment has been minimized. PERMITTEE shall comply with all such applicable requirements of CITY and shall incorporate all other changes to its plans as requested by CITY in accordance with such applicable requirements. Final plans and specifications shall be submitted and subject to review and approval in accordance with the Policy or applicable permitting requirements.

D. PERMITTEE's Obligations. All construction, excavation, maintenance and repair work done by PERMITTEE shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to CITY, the general public and individuals. PERMITTEE shall be liable for any damage to CITY or CITY-owned property caused by PERMITTEE or PERMITTEE's failure to act in a timely manner. All such construction, excavation, maintenance and repair work done by PERMITTEE shall comply with all applicable federal, state, and local laws, rules, and regulations, and PERMITTEE shall be responsible for obtaining all applicable permits and licenses. PERMITTEE shall, at PERMITTEE's sole cost and expense, maintain the construction, excavation, maintenance and repair work areas in a neat and tidy manner, and free and clear of all obstructions, trash, rubbish, debris and other materials. CITY shall have the right to inspect all construction or excavation work to insure compliance with this Agreement and all applicable laws, regulations, and permits, and may order PERMITTEE to perform corrective work, with respect to which PERMITTEE shall promptly comply. All public and private property disturbed by PERMITTEE's activities shall be promptly restored by PERMITTEE at its expense to the same or similar conditions existing prior to such activities, subject to inspection by CITY's Director of Public Works, City Engineer or his or her designee and compliance by PERMITTEE with any remedial actions required by said official pursuant to the inspection, all to the satisfaction of such CITY official. PERMITTEE shall be liable to CITY for the full cost of restoring any public property not promptly or adequately remedied by PERMITTEE as required by said official.

E. Installation, Maintenance, Renovation and Replacement of Facilities. The installation, maintenance, renovation and replacement of Facilities by PERMITTEE shall be subject to regulation by CITY through requirements including, without limitation, CITY's Municipal Code, this Agreement, and the attached Policy, with respect to matters including but not limited to: (a) the location of Communications Facilities in or upon the streets, alleys and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Communications Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, street lights, traffic signals, and all other municipal or authorized use of the Rights-of-way. CITY's Director of Public Works or City Engineer, or his or her designee, may direct and require PERMITTEE to locate its Communications Facilities within a defined telecommunications corridor within any street or other Rights-of-way or otherwise at a specific location to minimize interference with other facilities or utilities. PERMITTEE shall install and maintain its Communications Facilities in such manner as to minimize interference with trees, natural features and vegetation.

CITY agrees to make a good faith effort to process all of PERMITTEE's completed applications for construction permits in a timely manner.

Article VII- Additional CITY Regulation

CITY expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such policies, ordinances and rules and regulations as CITY in its sole discretion deems necessary or appropriate to promote the health, safety or welfare of CITY,

its inhabitants or their property. Not in limitation of the foregoing sentence, PERMITTEE understands that CITY reserves its right and duty to adopt changes to the Policy, attached as Exhibit A, from time to time as deemed necessary for the best interests of CITY, its inhabitants or their property.

Article VIII - Coordination and Conduit/Pole Sharing

In order to minimize disruption to vehicular traffic and inconvenience to the public, and protect the public interests in connection with permitted uses of Rights-of-way, which have limited capacity, by utilities, holders of leases and permits and other interests needing to locate or maintain facilities in the Rights-of-way for the benefit of the public, it is imperative that any conduit sharing and other colocation solutions be encouraged and utilized to the greatest extent possible. In furtherance of such purposes, PERMITTEE agrees, wherever reasonably feasible, that it shall collocate its Communications Facilities and cooperate with CITY and others in placing conduit within the Rights-of-way and in sharing or utilizing unused space within underground conduits owned by PERMITTEE or others, and upon any on or above ground Communications Facilities owned by PERMITTEE or others. At any time that CITY or PERMITTEE intends to install new underground conduit or replace existing underground conduit, or install or replace other facilities in CITY's controlled Rights-of-way, such Party shall endeavor, whenever feasible, to provide the other Party with forty-five (45) days advance written notice in order to permit the additional contemporaneous installation of conduit and assessment of potential collocation. If either Party desires additional conduit installed, it will so notify the other Party. The Party providing such notice shall be responsible for the additional incremental expense for installing such additional conduit.

Article IX -Insurance and Bond

A. Insurance. Prior to commencement of any installation of Communications Facilities under this Agreement, PERMITTEE shall procure and thereafter continuously maintain, for as long as this Agreement remains in effect, the insurance coverages specified in the Policy.

B. Bond. PERMITTEE shall file with the City Clerk a continuing performance bond as specified in the Policy.

Article X – Term and Renewal

A. Initial Term. The initial Term of this Agreement shall be for a period of ten (10) years from and after the Effective Date of the Agreement, unless sooner terminated as provided in this Agreement or for any reason a permit is terminated or may be terminated by CITY.

B. Renewal. At the expiration of the initial Term, this Agreement shall automatically renew thereafter from year to year, unless either Party provides notice to the other of its intention not to renew prior to the expiration of the initial or any renewal term.

Article XI - Indemnification and Representations

A. Indemnity. Pursuant to this Article, which shall survive the termination of this

Agreement, PERMITTEE shall indemnify, defend and hold harmless CITY, its officers, employees, elected officials, boards, commissions and any other legal entity affiliated with CITY from and against all liabilities, claims, damages, penalties, losses, demands, suits, costs, and expenses whatsoever for personal injury, death, or property damage which arise from or on account of, in whole or in part, any acts or omissions of PERMITTEE, or any agent of PERMITTEE, pursuant to this Agreement or any permit, including without limitation, all liabilities, claims, losses, demands, suits, costs, expenses, damages or penalties arising out of PERMITTEE's installation, construction, operation, maintenance, or removal of the System and Communications Facilities, except for such liabilities, claims, losses, demands, suits, costs, expenses, damages or penalties caused solely by the intentional misconduct or gross negligence of CITY or agent thereof. PERMITTEE also hereby agrees, at its sole discretion, to either defend the CITY against indemnified claims or to pay all reasonable expenses incurred by CITY in defending itself with regard to any damages, claims or penalties arising from PERMITTEE's acts or omissions, including all out-of-pocket expenses, reasonable attorney's fees, and the reasonable value of any services rendered by the City Attorney, their assistants or sub-consultants, or any employees of CITY.

B. CITY's Immunities. Nothing in this Agreement is intended, nor shall it be construed, to create or extend any rights, claims or benefits to, or assume any liability for or on behalf of, any third-party, or to waive any rights, immunities or limitations otherwise conferred upon CITY under or by virtue of federal or state law.

C. Notice and Defense of Third-Party Actions. Each Party entitled to indemnification under this Article X (the "Indemnified Party") shall give prompt written notice to the Party that is obligated to provide such indemnification (the Indemnifying Party") of the commencement or assertion of any claim by a third-party (collectively, a "third-party action") in respect of which the Indemnified Party will seek indemnification hereunder, which notice shall state, to the extent known to the Indemnified Party, the basis on which the claim for indemnification is made, the facts giving rise to or the alleged basis of the third-party action, and the amount (which may be estimated) of liability asserted by reason of the claim; such notice shall also include a copy of the document (if any) by or in which the third-party action is commenced or asserted. Any failure to notify the Indemnifying Party shall not relieve it from any liability that it may have to the Indemnified Party under this Article unless the failure to give such notice materially and adversely prejudices the Indemnifying Party or caused the Indemnifying Party to incur any additional expense and then only to the extent of such prejudice or additional expense. The Indemnifying Party shall have the right to assume control of the defense of or settle or otherwise dispose of such third-party action on such terms as the Indemnifying Party deems appropriate; *provided, however, that:*

(1) The Indemnified Party shall be entitled, at its own expense, and without unreasonable interference with the actions of the Indemnifying Party, to participate in the defense of third-party actions;

(2) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement, compromise, admission or any acknowledgment of the validity of a third-party action or any liability in respect thereof, which consent shall not be unreasonably withheld;

(3) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include a release from all liability by each claimant or plaintiff to each Indemnified Party with respect to such third-party action; and

(4) In the event the Indemnifying Party fails to assume the defense within a reasonable length of time, the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or other acknowledgment of any third-party action.

D. Cooperation. The Parties shall cooperate with each other in the defense of any third-party action that is the subject of this Article X and shall furnish each other all such further information that they have the right and power to furnish as may reasonably be necessary to defend such third-party action.

E. Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

(1) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

(2) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

(3) This Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms; and

(4) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court, or body.

Article XII – Remedies Upon Breach

A. In the event of any breach of the terms of this Agreement by either Party, the non-breaching Party shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one or more of them constitute any bar or limitation to the exercise of any other: (1) specific performance or injunctive relief, (2) monetary damages, and (3) termination. In the event either Party is required to commence an action to enforce its rights under this Agreement or to obtain remedies provided above and substantially prevails therein, such Party shall be entitled to recover its costs, including attorney's fees and expert witness fees.

B. Before terminating the Agreement pursuant to subsection "A" above on account of any default, the non-defaulting Party shall provide the Party in default with written notice of the default and afford such Party a reasonable period in which to cure the default which shall be at

least 30 days, unless otherwise agreed by the non-defaulting Party.

Article XIII - Delays and Limitation of Liability

A. Delays. Under no circumstances shall CITY ever be liable for any outage, interference or interruption, or for any delay in restoring any service or any operational aspect, of PERMITTEE's Communications Facilities and System within the Rights-of-way which have been subjected to an outage, interference or interruption, whatever the cause of such outage, interference or interruption, unless solely caused by the intentional misconduct or gross negligence of CITY or agent acting on behalf of CITY, and CITY would be liable under the Nebraska Political Subdivisions Tort Claims Act.

B. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall CITY be liable to PERMITTEE or any agent of PERMITTEE for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with transmission interruptions or problems, including but not limited to, any special, incidental, indirect, punitive, reliance or consequential damages relating to damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of PERMITTEE's customers whether occasioned by any repair or maintenance performed by, or failed to be performed by, CITY or agent acting on behalf of CITY, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. All claims for damages arising out of this Agreement shall be made within the limitations period specified by applicable Nebraska Statutes. Notwithstanding any longer limitations period that might be provided by applicable law, no claims for damages with respect to this Agreement may be made more than five (5) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of this Agreement may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

Article XIV- Notices

Except as otherwise provided herein, notice under this Agreement shall be deemed sufficient if provided in writing and mailed, regular U.S. mail or certified mail, or personally delivered as follows:

If to CITY:

City of La Vista
City Clerk
8116 Park View Boulevard
La Vista, NE 68128

With a copy to:

City of La Vista Public Works
Public Works Director
9900 Portal Road
La Vista, NE 68128

With a copy to:

Tom McKeon, City Attorney

200 Regency One
10050 Regency Circle
Omaha, NE 68114

If to PERMITTEE: MCImetro Access Transmission Services Corp.
d/b/a/ Verizon Access Transmission Services,
600 Hidden Ridge
Mailcode:
HQE02E88 Irving,
TX 75038

With an additional copy to: Verizon Business Network Services
1320 North Courthouse Road, Suite 900
Arlington, VA 22201
Attn: General Counsel, Network & Technology

Either Party may notify the other Party in writing of changes in the persons to whom notices are to be delivered. Notices shall be deemed given upon delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.

Article XV- Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. No provision of this Agreement shall confer rights or benefits upon any person not a Party to this Agreement.

Article XVI - Signatures

The persons signing this Agreement on behalf of PERMITTEE represent and warrant that such persons and PERMITTEE have the requisite power and authority to enter into, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of PERMITTEE enforceable against PERMITTEE in accordance with its terms.

Article XVII - Miscellaneous Provisions

A. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.

B. Limitation of Benefits. It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

C. Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such

invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said Agreement.

D. Independent Contractors. In all matters pertaining to this Agreement, the relationship of PERMITTEE and CITY shall be that of independent contractors, and neither PERMITTEE nor CITY shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between PERMITTEE and CITY; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharges of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and workers compensation responsibilities.

E. Labor Relations. Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

F. Exercise of Rights. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

G. Additional Actions and Documents. Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

H. Survival. The obligations of the Parties under Articles IV, V, VII, XI, XII, XIII, XIV, XV, XVI and XVII, and any other provisions of this Agreement that by its terms contemplate continuing duties or performance, shall survive any termination of this Agreement.

I. Headings. Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

J. Incorporation of Exhibits. The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof and incorporated into this Agreement by reference to the same extent as if written at length herein.

K. Governing Law. This Agreement and each of its provisions shall be governed by and construed and interpreted according to all applicable federal laws, state statutes, and CITY

ordinances and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law.

L. Forum Selection and Personal Jurisdiction. Any dispute arising from this contractual relationship which rises to the level of a lawsuit shall be solely and exclusively filed in, conducted in, and decided by the courts located in Sarpy County, Nebraska or by the federal courts located in Douglas County, Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in such courts located in Nebraska.

M. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

N. Agreement Binding. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties and all their respective representatives, successors, assigns, heirs, and estates. No special meaning shall be given to any instance in this Agreement in which the name of a Party is used without the phrase "successors and assigns" following immediately thereafter, unless expressly stated otherwise.

O. Assignment. Neither Party hereto shall assign or otherwise convey any of its rights, title, or interests under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, a Party may assign this Agreement to a successor in interest who has purchased substantially all of the stock or assets of the Party without seeking the consent of the other Party, but shall provide written notice of the same to the other Party within thirty (30) days of such assignment.

P. Entire Agreement. This Agreement, including the permits granted pursuant to this Agreement and the Exhibits attached to this Agreement, constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein. No representations were made or relied upon by either Party in executing this Agreement other than those expressly set forth herein.

Q. Amendments. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by authorized representatives of both Parties.

R. Force Majeure. Neither Party will be liable for the failure to fulfill its obligations under this Agreement if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of Facilities, or compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither Party will liable for delays caused by the inaction of utilities, local exchange carriers, or other political subdivisions in granting access to Rights-of-way, or any required items needed for the installation or operation of the Communications Facilities.

S. Conflict of Interest. The Parties declare and affirm that no officer, member, or employee of CITY, and no member of its governing body, and no other public official of CITY who exercises any functions or responsibilities in the review or approval of the undertaking described in this Agreement, or the performing of services pursuant to this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or any corporation, partnership, or association in which he or she is directly or indirectly interested; or shall any employee of CITY, nor any member of its governing body, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

T. Drug Free Policy. Each Party hereto represents and warrants to the other that it has established and maintains a drug free workplace policy.

U. Non-Discrimination Clause. Pursuant to Neb. Rev. Stat. §73-102, PERMITTEE declares, promises, and warrants it has and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C.A. §1985, et seq.) and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §48-1101, et seq., and that PERMITTEE, and each contractor employed, used, or hired by PERMITTEE to plan, construct, repair, maintain or otherwise work on the Communications Facilities, shall not unlawfully discriminate or permit discrimination at any time in violation of state or federal law against any employee which is employed in the performance of this Agreement or work in connection with this Agreement, or against any applicant for such employment, in the hire, tenure, terms, conditions, or privileges of employment, because of age, color, national origin, race, religion, sex, or disability, or 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.

V. New Employee Work Eligibility Status. The Parties shall comply with the residency verification requirements of Neb. Rev. Stat. § 4-108 through § 4-114 and of all federal laws. The Parties are required and shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. .

[End of document; Signature pages to follow]

IN WITNESS WHEREOF, PERMITTEE and CITY have executed this Agreement as of the date first above written.

CITY OF LA VISTA
a Nebraska Municipal Corporation

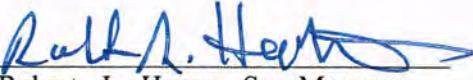
Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

PERMITTEE:

**MCImetro ACCESS TRANSMISSION
SERVICES CORP. d/b/a/ Verizon
Access Transmission Services,
a Delaware limited liability company**


By: Robert J. Hayes, Sr. Manager
Network Engineering/Operations

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

On this 30th day of April, 2019, before me, Notary, personally appeared **Robert J. Hayes**, Senior Manager, Network Engineering/Operations for MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, a Delaware limited liability company, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity on behalf of MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, and that by his signature on the instrument executed the instrument.

WITNESS my hand and official seal.


Notary

(SEAL)

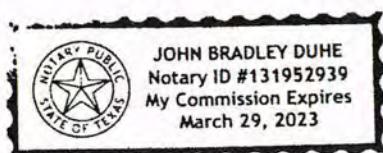


EXHIBIT A

**STATEMENT OF POLICY AND STANDARD SPECIFICATIONS
FOR COMMUNICATIONS CABLE
AND FACILITIES IN PUBLIC RIGHTS-OF-WAY**

[Attach copy of current Policy]

**STATEMENT OF POLICY AND STANDARD SPECIFICATIONS FOR
COMMUNICATIONS CABLE AND FACILITIES IN PUBLIC RIGHTS-OF-WAY**

SECTION A - PERMIT REQUIRED; TERMS DEFINED

(i) 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 (“CITY”) for the installation, operation and maintenance of any underground fiber optic cable, coaxial cable, or any other telecommunications or communications cable, line, facility, or appurtenance, unless such person has received a permit therefore granted by a **Master Agreement for Communications Cable and Facilities in Public Rights-of-Way** (the “Agreement”), approved by Resolution of the City Council, or as otherwise provided herein. This **Statement of Policy and Standard Specifications for Communications Cable and Facilities in Public Rights-of-Way** (the “Policy”) shall not apply to any cable or other facilities installed or operated by the holder of any CITY franchise under its terms for telephone, cable television, or communications purposes wherein such telephone, cable television service, or communications is provided to the inhabitants of CITY as described in such franchise.

(ii) For purposes of this Policy, all terms not otherwise defined herein shall have the respective meanings ascribed to them as set forth in the Agreement.

SECTION B - APPLICATION FOR PERMIT

(i) Application for such permit shall be made to CITY’s Building Department, and such application shall be in writing, stating specifically the space desired, its length, breadth and depth, the streets, alleys, sidewalks or other public space intended to be used, the use intended to be made thereof, a description of the users if the facility is not to be available to the general public, a description of all users if any conduit or other Facilities is to be shared by a number of users, and the carrying capacity and diameter of the Cable or other Facilities being installed. The Building Department shall forward the application to the Public Works Department for review and comment. Thereafter, the Building Department, City Engineer 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 for which there is no Agreement in effect conforming to this Policy and these specifications shall be referred to the City Council for approval of an Agreement by Resolution prior to the granting of any permit. Other permits (for which such an Agreement is in effect) may be granted by the Building Department with the review and approval of the City Engineer or Public Works Department.

(ii) Following initial application and discussions with the Building Department, City Engineer and Public Works Department, as applicable, concerning the placement of such Cable, line or Facility, and related appurtenances, the applicant or PERMITTEE shall supply accurate drawings sealed by a Nebraska-licensed professional engineer produced to a scale of one inch (1") equaling fifty feet (50'), or as specified by such City representatives during discussion and review of the initial application. The plans shall be a plan and profile of the proposed route, with Rights-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.

(iii) Within thirty (30) days after completion of the construction and installation work, 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 Mylar and a digital copy on electronic storage media 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 CITY can update and keep a current composite record of all the utilities within its jurisdiction. 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, Facility, or related appurtenances placement.

SECTION C - CONSTRUCTION SPECIFICATIONS

(i) 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 Municipal Code for CITY (the "City Code"), except that the provisions concerning bonds contained within this Policy shall control. Where the Cable or conduit is located beneath the pavement of major traffic streets or arterial streets, the minimum depth from the top of the Cable to the top surface of the ground or street, as applicable, shall be not less than thirty inches (30"), unless otherwise directed in writing by the Public Works Department. Cable or conduit buried beneath residential streets shall have a minimum depth below the top surface of the street of twenty-four inches (24"). In no instances shall Cable be buried to a depth of less than twenty-four inches (24"), unless a greater depth is directed by the Public Works Department in writing. Pull boxes and other items shallower than the depth specified above shall be clearly shown on the completed plans and as-built construction drawings covering the installation work.

(ii) All land surfaces and all pavement shall be restored to the same or similar conditions existing prior to PERMITTEE's construction, and shall require acceptance by the City Engineer to comply with City Code. In addition thereto, all established lawns which have been disturbed by the installation shall be resodded and all other earth surfaces shall be seeded and blanketed unless otherwise specified in the permit.

(iii) 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 all applicable provisions of the City Code, ordinances, and specifications, as adopted or amended from time to time.

SECTION D - BOND, INSURANCE AND PUBLIC LIABILITY

(i) Bond. Every applicant for such permit shall file with CITY a continuing performance bond in the amount of Fifty Thousand dollars (\$50,000.00), or such greater sum determined by the City Engineer to be reasonably proportionate to the size and scope of the work to be performed within CITY's Rights-of-way and potential loss(es) or damage(s) 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 guarantee PERMITTEE's performance of the Agreement and

Exhibit A

compliance with the conditions of the Agreement and of the permit, including, without limitation, completion of all construction and installation efforts. **Such bond by its terms shall remain in effect during the term of the Agreement** or until PERMITTEE ceases operating its Telecommunications Facilities within CITY and completes all removal, restoration, and other requirements of this Agreement without breach, whichever is later. All bonds and sureties shall be approved by the City Engineer before such permit becomes effective. All bonds shall be conditioned that PERMITTEE and their heirs, successors and assigns:

- (A) Shall faithfully perform the Agreement and comply with all conditions of the Agreement and of the permit;
- (B) Shall save and keep CITY free and harmless from any and all loss, liability or damages or 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 solely caused by CITY's own gross negligence or intentional misconduct;
- (C) Shall conduct work and activities under the Agreement and permit such that the street(s), alley(s), sidewalk(s) or other public ground(s) affected by PERMITTEE's work and activities under the Agreement and permit shall at all times after the completion of the work and activities be safe for public use;
- (D) Shall fully and completely protect CITY against any and all litigation growing out of the granting of such permit or anything done under such permit, except to the extent solely caused by CITY's intentional misconduct or gross negligence as previously specified;
- (E) Shall remove, at the conclusion of the Agreement, any Cable, conduit, equipment, or other Facility buried or otherwise placed in the Rights-of-way by PERMITTEE to the extent that such removal is requested by CITY, at the sole cost and expense of PERMITTEE or its heirs, successors or assigns;
- (F) Shall faithfully comply with, perform and observe all of the terms and conditions of this Policy and any other conditions and provisions of City Code; and
- (G) Shall promptly and fully pay, when due, any amounts coming due to CITY or others under the Agreement, the permit, this Policy, or any Ordinance of CITY.

PERMITTEE and the owners (from time to time) of the permitted communication Cable or Facilities shall be jointly and severally liable to CITY for the performance of all of the conditions of the bond above-described. Whenever the City Engineer shall be of the opinion that the sum or surety on such bond given in connection with a permit issued hereunder has become insufficient, and shall so declare such insufficiency in writing sent by regular U.S. Mail to PERMITTEE, or to his, her, or its successor or assign, PERMITTEE, successor or assign shall obtain a new bond for such permit with a new surety, to be filed with and approved by the City Engineer. The bond, or any new bond (as the case may be), shall establish the maximum liability of the surety for loss(es) CITY may sustain if PERMITTEE fails to perform the Agreement and comply with the conditions

Exhibit A

of the Agreement and of the permit, but shall not in any respect limit the liability of PERMITTEE concerning any such loss(es).

(ii) **Insurance.** In addition to the bond, PERMITTEE, or his, her, or its successor or assign shall procure and thereafter continuously maintain in full force and effect, for as long as this Agreement remains in effect, at applicant's or PERMITTEE's expense: (1) Commercial General Liability ("CGL") with a limit of \$1,000,000 per occurrence for bodily injury (including death) and property damage liability and \$5,000,000 general aggregate including products/completed operations and explosion, collapse and underground hazards, and CITY shall be included as an Additional Insured-as on such coverages on a primary and non-contributory basis as its interest may appear under this Agreement, including completed operations, Waiver of Subrogation in favor of CITY, (2) Commercial Automobile Liability insurance with limits of \$1,000,000 Combined Single Limit (CSL) each accident for bodily injury and property damage covering all Owned, Hired, and Non-Owned motor vehicles, (3) Workers' Compensation Insurance in compliance with the statutory requirements of the state(s) of operation and employer's liability with a limit of \$500,000.00, each accident/disease/policy limit. This Agreement shall be defined as an insured contract. On all such policies and certificates of insurance PERMITTEE shall cause CITY to be included as an Additional Insured for the duration of this Agreement and completion of all work on CITY property, excluding workers compensation and employer's liability, and shall waive subrogation of claims against CITY as an Additional Insured. All such policies and certificates of insurance shall be issued by companies authorized to do business in the State of Nebraska. **A certificate of insurance shall be filed with the City Clerk's office prior to commencement of any construction or installation or other work or activity under a permit**, which evidences compliance with the policy requirements stated above. Upon receipt of notice from its insurer(s) PERMITTEE shall provide the City Clerk with thirty (30) days' prior written notice of cancellation of any coverage required herein. Any cancellation, termination, or lapse of a required insurance coverage shall 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 (30) days.

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

(i) No person, whether permitted under this Policy or otherwise shall ever use the space above, on or under any street, alley, sidewalk or public ground of CITY in such manner as to interfere with any traffic control or energy cable, sewer, gas or water conduit or installation, or any other public facilities, installations, or utilities lawfully above, on or under such street, alley, sidewalk or other public space unless by consent of CITY specifically granted in the permit. Whenever any applicant or PERMITTEE is given permission or required 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 and control of CITY or other public entity controlling such public facility, and all such work shall be done promptly in accordance with the directions of the City Engineer or Public Works Department so as to minimize the interruption of the public's use of such facilities.

(ii) All work undertaken by the applicant or PERMITTEE which requires inspection by CITY, as specified by law, ordinance, or regulation, or in the permit or Agreement, shall be

Exhibit A

performed subject to the requirement that CITY be fully reimbursed for its reasonable and documented inspection costs, whether the same are incurred as part of the initial installation or the relocation of either PERMITTEE's Facilities or those belonging to CITY or any other utility service, or during maintenance or repair work by PERMITTEE.

(iii) In addition thereto, all permits governed by these specifications are granted subject to the requirement and condition that whenever any work is initiated by CITY, the State of Nebraska, Sarpy County, the Omaha Public Power District or any other publicly owned entity, Black Hills Energy, or any holder of any franchise from CITY, or is needed to be performed 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 from written request for the same, in order to reasonably accommodate such work. If PERMITTEE fails to undertake or cause the relocation or safeguarding of its Communications Cable or Facilities within a reasonable time, then CITY shall have the right to relocate or allow relocation of PERMITTEE's Communications Cable or Facilities and to assess and collect the reasonable and documented cost from PERMITTEE or any other owner of the Facility.

(iv) PERMITTEE shall, at its own cost, maintain a local agent available on a twenty-four hour per day, seven day per week basis, to provide to CITY, any public entity, or any other person permitted to do work in any CITY Rights-of-way, detailed and accurate information concerning the locations, whether in plan, section or profile, or any combination of the same, of PERMITTEE's Cable, lines, appurtenances or other Facilities. This requirement can be satisfied by PERMITTEE's utilization of a local utility locating service maintained by others, or this provision may be satisfied by any other local, competent agency. PERMITTEE shall be a party to the Nebraska One-call system.

(v) PERMITTEE, its heirs, successors and assigns, shall at all times be and remain solely responsible for injuries and damages to its Cable, lines, appurtenances and other Facilities caused by any party due to any inaccuracies in the information given by PERMITTEE or its agent(s) with respect to the location of such Cable, lines, appurtenances, or other Facilities. CITY, working on public property, shall be responsible for damages to PERMITTEE's Communications Cable or Facilities only if and to the extent that such damages are solely caused by the intentional misconduct or gross negligence of CITY for the Communications Cable or Facilities of PERMITTEE.

SECTION F - REVOCATION OF PERMIT; REMOVAL OF FACILITIES

(i) A permit issued under this Policy may be revoked by Resolution of the City Council upon a finding by the Council of such facts shown below and a failure of PERMITTEE to cure such breach within thirty (30) days of sending written notice to such person by the City Clerk, for the following reasons:

- (A) Failure of PERMITTEE to make any required payment to CITY within thirty (30) days after the payment due date;
- (B) Failure or neglect of PERMITTEE to comply with any material provisions of this Policy, these specifications, the permit, the Agreement, or any provision of City

Exhibit A

Code applicable to the permit or the use and occupancy of Rights-of-way.

(ii) Upon revocation, expiration, or termination of the permit, PERMITTEE shall forthwith, as directed by the City Engineer, either remove or abandon in place the Cable, lines, Facilities, and/or appurtenances for which the permit was granted. 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 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(ii) above. All removals and restoration of land and public facilities shall be at the cost of PERMITTEE, and PERMITTEE shall hold CITY free from any and all encroachments or claims of any type. PERMITTEE's facilities which are not removed as directed by CITY shall become the property of CITY upon CITY's certification that PERMITTEE has complied with all requirements of abandonment or cancellation with respect to the specific segment of Cable involved. If PERMITTEE fails or refuses to complete such removal or abandonment in place, as directed by CITY, and restoration as specified more fully in Section C(ii), within six (6) months after revocation, expiration, or termination of any such permit, then CITY may cause such work to be done and the cost of such work shall be paid by PERMITTEE to CITY on demand, and until paid such cost shall be a lien against and upon all Cable, lines, Facilities, equipment, and other property of PERMITTEE.

(iii) Upon a determination by the City Council that Rights-of-way space for which the permit is granted is needed for other public use and that relocation is required, then PERMITTEE's rights under said permit may be transferred, to the extent possible by the cooperation of CITY and PERMITTEE, to another specific space within the same or nearby Rights-of-way that is satisfactory to the City Engineer. Such relocation work shall be accomplished by the PERMITTEE at its costs within the time frame specified in Section E(iii) hereof.

SECTION G - COSTS TO BE PAID BY PERMITTEE TO CITY FOR USE OF PUBLIC RIGHTS-OF-WAY

(i) Payment of Occupation Tax for Use of Public Rights-of-Way for Telecommunication or Communication Services offered to the General Public for a Fee. If PERMITTEE is using the public space within the Rights-of-way for Telecommunication or communication services, fiber rental, or fiber use offered to users or subscribers within the corporate limits of CITY for a fee, PERMITTEE shall pay to CITY on an annual basis an occupation tax, as provided in Article IV(C) of the Agreement. In the event that PERMITTEE's use of the public Rights-of-way is for the purposes set forth herein, the rental fee set forth in Section G(ii) below shall not apply.

(ii) Payment of Rental Fee for Use of Public Rights-of-Way for Private, Non-Public Telecommunication Services. If PERMITTEE will be occupying or using the public space within the Rights-of-way solely for purposes that are not described in subsection G(i) above (such as (a) for private, non-public telecommunication or communication services, fiber rental, or fiber use, or (b) for users or subscribers all of whom are located outside the corporate boundaries of CITY, or (c) in other circumstances deemed appropriate by CITY, PERMITTEE shall pay to CITY an annual rental fee for the use and occupancy of CITY's public space within the Rights-of-way, upon, above,

Exhibit A

under or within said public street, alley, sidewalk or other public ground occupied by such use, which rental shall be the sum of Two Dollars and No Cents (\$2.00) per lineal foot of space occupied upon, above, under or within the public street, alley, sidewalk or other public ground (the "rental fee"). In the event that PERMITTEE's use of the public Rights-of-way is for the purposes set forth herein, the Occupation Tax for use of Public Rights-of-way for Telecommunication or Communications Services, set forth in Section G(i) above, shall not apply.

(iii) Payment of Direct Costs. In addition to Sections G(i) and G(ii) herein, PERMITTEE also shall promptly pay or reimburse CITY for any actual direct and indirect costs incurred by CITY in facilitating, regulating, or otherwise incurred in connection with PERMITTEE's use of the public Rights-of-way, including, but not limited to, the following: (a) applicable regulatory expenses resulting from such use, such as the fees related to permit applications; (b) inspection costs; and (c) actual costs of CITY of all barricading, traffic detour or warning signing or flagging not actually performed by PERMITTEE, and for all other direct and indirect costs and expenses incurred by CITY in regulating PERMITTEE's use of Rights-of-way pursuant to the permit and Agreement.

(iv) Payments. All payments pursuant to Section G(i) shall be due and payable as provided in City Code, or as otherwise provided herein. All payments made under Section G(ii) shall be due and payable in advance on the first day of January of each year; provided, however, if the permit is issued for such Rights-of-way space after the first day of January, the amount of the initial payment shall be prorated from the day when such permit is issued through December 31 of that same calendar year, and such initial payment shall be due and payable within ten (10) 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 or before the first day of January thereafter. Any such rent shall become delinquent on the first day of January of each year, and such delinquent rent shall draw 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 may be specified in the permit. Upon no less than ten (10) days written notice to PERMITTEE, CITY shall have the right to audit, or designate an accounting firm to audit, PERMITTEE's accounting records relating to its performance under this Agreement.

EXHIBIT B

COMMUNICATIONS FACILITIES LOCATIONS, PLANS, AND SPECIFICATIONS

Exhibit B shall be comprised of all proposed and future locations, plans, and specifications of Communications Facilities as approved by authorized representatives of CITY from time to time.

[Attach copies of initial and future applicable plans and specifications as approved from time to time]