

# MINUTE RECORD

No. 729—REDFIELD & COMPANY, INC., OMAHA

## LA VISTA CITY COUNCIL MEETING December 20, 2011

A meeting of the City Council of the City of La Vista, Nebraska was convened in open and public session at 7:00 p.m. on December 20, 2011. Present were Councilmembers: Sell, Ronan, Sheehan, Quick, Carlisle, Crawford, Ellerbeck and Gowan. Also in attendance were City Administrator Gunn, Assistant City Administrator Ramirez, City Attorney McKeon, City Clerk Buethe, Library Director Barcal, Police Chief Lausten, Fire Chief Uhl, Public Works Director Soucie, Finance Director Lindberg, Community Development Director Birch, Recreation Program Coordinator South and City Engineer/Assistant Public Works Director Kottmann.

A notice of the meeting was given in advance thereof by publication in the Times on December 8, 2011. Notice was simultaneously given to the Mayor and all members of the City Council and a copy of the acknowledgment of the receipt of notice attached to the minutes. Availability of the agenda was communicated to the Mayor and City Council in the advance notice of the meeting. All proceedings shown were taken while the convened meeting was open to the attendance of the public. Further, all subjects included in said proceedings were contained in the agenda for said meeting which is kept continuously current and available for public inspection at City Hall during normal business hours.

Mayor Kindig called the meeting to order and led the audience in the pledge of allegiance.

Mayor Kindig made an announcement regarding the agenda policy statement providing for an expanded opportunity for public comment on the agenda items.

### SERVICE AWARD – DAN SCARPA – 10 YEARS

Mayor Kindig recognized Dan Scarpa for 10 years of service to the City.

### APPOINTMENTS – PARK AND RECREATION ADVISORY BOARD – RE-APPOINT PATRICK LODES AND JEFF KUPFER; CIVIL SERVICE COMMISSION – RE-APPOINT – LARRY FILBRANDT

Mayor Kindig stated, with the approval of the City Council, he would like to re-appoint Kim Schmit-Pokorny and Valerie Russell to the Library Advisory Board and Tom Miller to the Planning Commission. Councilmember Sell motioned the approval, seconded by Councilmember Quick. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Absent: None. Motion carried.

### PRESENTATION TO THE HEARTLAND FOOD BANK

Council President Terrilyn Quick presented a check to a representative of the Heartland Food Bank in the amount of \$754.67. This money was donated by City employees.

#### A. CONSENT AGENDA

- 1.APPROVAL OF THE AGENDA AS PRESENTED
- 2.APPROVAL OF CITY COUNCIL MINUTES FROM DECEMBER 6, 2011
- 3.MONTHLY FINANCIAL REPORT – NOVEMBER 2011
- 4.REQUEST FOR PAYMENT – MIDWEST RIGHT OF WAY SERVICES, INC. –  
THOMPSON CREEK PROJECT - \$680.00
- 5.REQUEST FOR PAYMENT – MULLEN & MULLEN – PROFESSIONAL SERVICES -  
\$6,662.50
- 6.REQUEST FOR PAYMENT – THOMPSON, DREESSEN, DORNER – PROFESSIONAL  
SERVICES - \$2,714.05
- 7.REQUEST FOR PAYMENT – RDG PLANNING & DESIGN – PROFESSIONAL  
SERVICES - \$12,117.00
- 8.APPROVAL OF CLAIMS

Councilmember Gowan made a motion to approve the consent agenda. Seconded by Councilmember Carlisle. Councilmember Sell reviewed the claims for this period and reported that he found everything to be in order. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain None. Absent: None. Motion carried.

4 SEASONS AWARDS, metals	18.00
ABE'S PORTABLES INC, rentals	82.03
ACCURATE TOOL & DIE, maint.	105.74

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ACTION SIGNS INC., maint.	332.00
ALAMAR UNIFORMS, apparel	420.71
ANDERSON EXCAVATING COMPANY, services	72,190.00
ARAMARK UNIFORM, services	374.11
ASPHALT & CONCRETE MATERIALS, maint.	528.19
ASSOCIATED FIRE PROTECTION, services	1,770.39
BAKER & TAYLOR BOOKS, books	303.18
BCDM-BERINGER CIACCIO DENNELL, services	506.50
BERRY DUNN, study	8,002.70
BLACK HILLS ENERGY, utilities	752.07
BRAKE, A., auto	100.00
BRENTWOOD AUTO WASH, maint.	56.00
BREWER, A., auto	100.00
BUILDERS SUPPLY CO., maint.	177.81
CARDMEMBER SERVICE	8,924.54
CARL JARL LOCKSMITHS, equip.	9.63
CENTER POINT PUBLISHING, books	211.50
CENTURY LINK, phone	1,071.63
CJ'S HOME CENTER, maint.	1,415.72
CORNHUSKER INTL, maint.	293.72
COX COMMUNICATIONS	148.65
CREIGHTON EMS, training	250.00
DANDERAND, J., training	412.20
DANIELSON/TECH SUPPLY, bld&grnds	1,413.30
DEIML, K., training	100.00
DIAMOND VOGEL PAINTS, bld&grnds	77.34
DOOR EXPRESS INC., bld&grnds	445.00
DULTMEIER SALES & SERVICE, maint.	13.98
DXP, maint.	69.00
EDGEWEAR SCREEN PRINTING, metals	39.00
ELECTRIC MACHINERY SALES, bld&grnds	102.05
EMBLEMS INC, apparel	364.65
FEDEX, postage	32.72
FELD FIRE, maint.	48.65
FILTER CARE, maint.	310.20
FITZGERALD SCHORR BARMETTLER, service	15,361.97
FOCUS PRINTING, printing	964.14
FOOD BANK FOR THE HEARTLAND	754.67
GALE, books	118.48
GCR TIRE CENTERS, maint.	285.44
GENUINE PARTS -OMAHA, maint.	1,044.36
GRAINGER, bld&grnds	545.63
GRAYBAR ELECTRIC, bld&grnds	555.50
GREAT PLAINS ONE-CALL, services	228.57
GROVER, C., books	17.89
H & H CHEV., maint.	319.70
HANEY SHOE STORE, maint.	360.00
HEIMES CORP., bld&grnds	84.99
HIGHSMITH, supplies	282.17
HOBBY LOBBY, events	41.95
HOME DEPOT, equip.	63.88
ICMA, training	9,550.00
IVERSEN, B., mileage	55.08
J Q OFFICE EQUIP., supplies	906.42
JI SPECIAL RISKS INSURANCE	229.08
JOHNSTONE SUPPLY, equip.	21.87
KRIHA FLUID POWER, maint.	194.01
LAUGHLIN, KATHLEEN A, TRUSTEE	474.00
LAUSTEN, D., services	40.00
LEAGUE ASSN OF RISK MGMT	135.00

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LEXIS NEXIS MATTHEW BENDER, books	299.34
LINCOLN NATIONAL LIFE INS CO	10,572.73
LOGAN CONTRACTORS SUPPLY, bld&grnds	3,113.12
LOWE'S, equip.	15.02
MARTIN MARIETTA AGGREGATES, bld&grnds	478.64
MATHESON TRI-GAS INC, maint.	26.85
MC DONALD AND ASSOCIATES, services	30.85
MENARDS, bld&grnds	326.56
METRO LANDSCAPE MATERIALS, bld&grnds	140.00
MID CON SYSTEMS INC., bld&grnds	205.93
MIDWEST SERVICE AND SALES, supplies	1,579.64
MUNICIPAL PIPE TOOL, equip.	91.03
MYERS TIRE, bld&grnds	3,587.00
NEBRASKA MUNICIPAL CLERKS, dues	70.00
NEBRASKA STATE FIRE MARSHALL, services	360.00
NUTS AND BOLTS INC., maint.	272.13
ODB COMP., maint.	281.99
OFFICE DEPOT, supplies	1,368.74
OPPD, utilities	43,910.78
OMAHA WORLD HERALD, ads.	210.42
O'REILLY AUTO., maint.	711.53
ORIZON CPAS, services	4,052.04
PAPILLION SANITATION, services	304.11
PARAMOUNT LINEN & UNIFORM, services	379.91
PAYLESS OFFICE PRODUCTS, supplies	74.28
PERFORMANCE CHRYSLER JEEP, maint.	5,728.15
PETTY CASH-BUETHE, P.	239.45
PITNEY BOWES, services	204.00
PLAINS EQUIPMENT GROUP, maint.	553.94
QUILL CORP., training	84.60
READY MIXED CONCRETE, maint.	702.16
RETRIEVEX, services	84.33
RUNZA, events	450.00
RUSTY ECK FORD, maint.	4.13
S & W HEALTHCARE CORP, supplies	120.00
SAM'S CLUB, supplies	907.17
SAPP BROS, supplies	1,455.00
SARPY COUNTY TREASURER, services	9,646.87
TED'S MOWER, equip.	152.19
TEUSCHER, C., services	250.00
THOMPSON DREESSEN & DORNER, design	2,714.05
TORNADO WASH, maint.	75.00
TURFWERKS, equip.	449.88
USB SEWER EQUIP., maint.	231.80
VOGEL, K., training	375.00
WASTE MANAGEMENT NEBRASKA, maint.	593.62
WITMER, equip.	444.96
WOOD, S., services	31.00
WOODHAVEN COUNSELING, services	210.00

## REPORTS FROM CITY ADMINISTRATOR AND DEPARTMENT HEADS

City Clerk Buethe reported that the Employee Recognition Dinner is Friday, January 20, 2012.

Police Chief Lausten reported that the Police department has raised \$630.00 for the Heartland Food Bank with their "Fuzz for Food" Challenge and they have a week left. On December 1, 2011 the police department had a Community Crime Prevention seminar with residents and some Apartment managers. It was well attended.

Library Director Barcal reported that the Runza fundraising even in September raised \$308.00 to purchase children's and teen's books. The library received 12 computers and 18 months of paid

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wireless service from the Library Broadband Builds Nebraska Communities, Nebraska's public computer center project funded by the U.S. Department of Commerce.

## B. ORDINANCE – AMEND THE MUNICIPAL CODE – CHAPTER 95 ANIMALS

Councilmember Ellerbeck introduced and moved for adoption of Ordinance 1160 entitled: AN ORDINANCE TO AMEND SECTIONS 95.13 AND 95.15, AND TO ADD SECTIONS 95.19 THROUGH 95.29, OF THE LA VISTA MUNICIPAL CODE, RELATING TO DOMESTIC ANIMALS, DANGEROUS AND POTENTIALLY DANGEROUS DOMESTIC ANIMALS, THEIR OWNERS, AND PERSONS HARBORING THEM; TO REPEAL SECTIONS 95.13 AND 95.15 AS PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

Police Chief Lausten gave an overview of the ordinance.

Councilmember Carlisle moved that the statutory rule requiring reading on three different days be suspended. Councilmember Sell seconded the motion to suspend the rules and upon roll call vote on the motion the following Councilmembers voted aye: Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. The following voted nay: None. The following were absent: Sell. The motion to suspend the rules was adopted and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Councilmember Gowan moved for final passage of the ordinance which motion was seconded by Councilmember Ellerbeck. The Mayor then stated the question, "Shall Ordinance No. 1160 be passed and adopted?" Upon roll call vote the following Councilmember voted aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. The following voted nay: None. The following were absent: None. The passage and adoption of said ordinance having been concurred on by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the City Clerk attested the passage/approval of the same and affixed her signature thereto.

## C. RESOLUTION – 84<sup>TH</sup> STREET BLIGHT & SUBSTANDARD STUDY – SUBMIT TO PLANNING COMMISSION FOR CONSIDERATION

Councilmember Quick introduced and moved for the adoption of Resolution No. 11-135; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA REQUESTING THE PLANNING COMMISSION TO REVIEW AND MAKE A RECOMMENDATION AS TO WHETHER THE 84<sup>TH</sup> STREET REDEVELOPMENT AREA IS A SUBSTANDARD AND BLIGHTED AREA, AND SUBMIT THEIR RECOMMENDATION TO THE CITY COUNCIL, AND AUTHORIZING FURTHER ACTION OF THE CITY CLERK.

WHEREAS, the Mayor and City Council hereby find and determine that there has been placed on file with the City Clerk a study entitled Blight/Substandard Determination Study for area referred to as the "84<sup>th</sup> Street Redevelopment Area" prepared by Hanna-Keelan (the "Study"); and

WHEREAS, under Section 18-2109, Nebraska Revised Statutes, it is necessary and appropriate to refer the Study to the Planning Commission of the City of La Vista for its review and recommendation as to whether the 84<sup>th</sup> Street Redevelopment Area is substandard and blighted.

NOW THEREFORE, BE IT RESOLVED that the following actions are hereby approved:

1. The Study is hereby ordered submitted to the Planning Commission of the City,
2. The Mayor and City Council of La Vista, Nebraska hereby direct that the question as to whether the 84<sup>th</sup> Street Redevelopment Area ("Area") is a substandard and blighted area shall be submitted to the Planning Commission of the City for its review and recommendation at its January 2012 regular meeting or such other meeting as the City Administrator determines appropriate (the date of which meeting, whenever held, shall be deemed the date of receipt of the Council's request), and the Planning Commission within thirty days after said meeting shall submit their written recommendation to the City Council.
3. The City Clerk is hereby authorized and directed to set such public hearings, provide such notices (including notices required by Neb. Rev. Stat. Section 18-2115), and take such other actions as required by State law or as the

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City Clerk, in consultation with the City Administrator, otherwise determines necessary or advisable to carry out the actions approved herein or to present for consideration of the City Council the Study or, after receiving the Planning Commission's recommendation, the question whether or not the Area shall be declared a substandard and blighted area in need of redevelopment.

Seconded by Councilmember Carlisle. Councilmember Sheehan stated he felt the redevelopment area was too broad. Councilmember Crawford asked what affect this will have on houses in the area. Community Director Birch stated there are no houses in the proposed area. Councilmember Ellerbeck wanted clarification on the apartments that are listed at 62+ years old when the report comes back to council. Councilmembers voting aye: Sell, Ronan, Quick, Carlisle, Crawford, Ellerbeck and Gowan. Nays: Sheehan. Abstain: None. Absent: None. Motion carried.

## D. RESOLUTION – COMMUNICATIONS CABLE & FACILITIES AGREEMENT – UNITE PRIVATE NETWORKS, LLC

Councilmember Crawford made a motion to table this agenda item until the January 3, 2012 meeting. Seconded by Councilmember Carlisle. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## E. RESOLUTION – APPROVE PURCHASE – POLICE MOTORCYCLE

Councilmember Quick introduced and moved for the adoption of Resolution No. 11-137; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE PURCHASE OF ONE (1) 2012 HARLEY DAVIDSON POLICE MOTORCYCLE FOR THE POLICE DEPARTMENT FROM WORTH HARLEY DAVIDSON, KANSAS CITY, MISSOURI, IN AN AMOUNT NOT TO EXCEED \$18,767.00.

WHEREAS, the City Council of the City of La Vista has determined that the purchase of a Harley Davidson motorcycle for the Police Department is needed; and

WHEREAS, the FY12 Budget did include grant funds for the purchase of said motorcycle; and

WHEREAS, proposals have been received and after review by the Police Chief it has been determined that the bid submitted by Worth Harley Davidson for a 2012 Harley Davidson "Police Model" FLHTPI was the low, compliant bid; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the purchase of one 2012 Harley Davidson Police Motorcycle for the Police Department from Worth Harley Davidson, Kansas City, Missouri, in an amount not to exceed \$18,767.00.

Seconded by Councilmember Gowan. Councilmember Crawford asked if maintenance would be local. Police Chief Lausten stated that all maintenance is done at the dealer on 72<sup>nd</sup> Street. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## F. RESOLUTION – APPROVE PURCHASE – SNOW BLOWER

Councilmember Carlisle introduced and moved for the adoption of Resolution No. 11-138; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE PURCHASE OF ONE (1) SBX240 – 84" SNOW BLOWER FROM BOBCAT OF OMAHA, NEBRASKA, IN AN AMOUNT NOT TO EXCEED \$6,200.00.

WHEREAS, the City Council of the City of La Vista has determined that the purchase of said snow blower for the Public Works Department is necessary; and

WHEREAS, the FY 2011/12 General Fund Budget provides funding for the purchase of said equipment; and

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WHEREAS, four quotes were received and reviewed by Public Works staff and the aforesaid purchase was recommended, and

WHEREAS Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska authorize the purchase of one (1) SBX240 – 84" Snow Blower from Bobcat of Omaha, Nebraska, in an amount not to exceed \$6,200.00.

Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## G. RESOLUTION – APPOINTMENT OF COMMUNICATION COMMITTEE AND SUB-COMMITTEE MEMBERS

Councilmember Ellerbeck introduced and moved for the adoption of Resolution No. 11-139; A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA PROVIDING FOR THE APPOINTMENT OF COMMITTEE AND SUB-COMMITTEE MEMBERS PER THE SARPY COUNTY COMMUNICATIONS SYSTEM INTERLOCAL AGREEMENT.

WHEREAS, the City Council of the City of La Vista has determined that the appointments to the Sarpy County Communications System Committees and Sub-Committees are necessary; and

WHEREAS, a recommendation by the City Administrator, in consultation with the staff, has been made regarding appointments; and

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby appoint the following city representatives to the Sarpy County Committees and Sub-Committees:

Communication Budget Advisory Committee — Chief Lausten

Communication Users Group — Chief Lausten; Alternate - Chief Uhl

Users Sub-Committees

- Fire/EMS — Chief Uhl
- Law Enforcement — Captain Pokorny

Shared Service Committee — Mayor Kindig; Brenda Gunn

Ex-Officio — Chief Lausten

Sub-Committees

- Fire — Chief Uhl
- Law — Captain Pokorny
- Fiscal — Sheila Lindberg

Seconded by Councilmember Quick. Councilmember Sheehan as when this would begin. City Administrator Gunn stated that it should be the middle of January 2012. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## H. STRATEGIC PLAN UPDATE

City Administrator Gunn gave an overview of the updates to the Strategic Plan. Councilmember Gowan asked if there was any feedback on the Thompson Creek Project. Gunn stated that there had been little if any negative feedback and there would be a survey going out in early 2012. Councilmember Quick made a motion to receive and file the Strategic Plan Progress Report. Seconded by Councilmember Sell. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

Councilmember Ronan made a motion to move Comments from the Floor up on the agenda ahead of Item I Executive Session. Seconded by Councilmember Carlisle. Councilmembers

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voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## COMMENTS FROM THE FLOOR

Mayor Kindig brought two Eagle Scouts forward to recognize them for their dedication.

### I. EXECUTIVE SESSION – PERSONNEL; CONTRACT NEGOTIATIONS

At 7:43 p.m. Councilmember Carlisle made a motion to go into executive session for protection of the public interest for contract negotiations and for the protection of the reputation of an individual to discuss personnel matters. Seconded by Councilmember Ellerbeck. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried. Mayor Kindig stated the executive session would be limited to the subject matter contained in the motion.

At 8:32 p.m. the Council came out of executive session. Councilmember Carlisle made a motion to reconvene in open and public session. Seconded by Councilmember Ellerbeck. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck, and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

## COMMENTS FROM MAYOR AND COUNCIL

Councilmember Quick stated there are items in the Council mailboxes she brought back from the National League of Cities annual conference.

At 08:34 p.m. Councilmember Crawford made a motion to adjourn the meeting. Seconded by Councilmember Sell. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Crawford, Ellerbeck and Gowan. Nays: None. Abstain: None. Absent: None. Motion carried.

PASSED AND APPROVED THIS 3RD DAY OF JANUARY, 2012

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

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PLANNING • DESIGN

November 30, 2011

DEC 16 2011

Project No: 2011.519.00.I  
Invoice No: 34468

Chris Solberg  
City of La Vista  
8116 Park View Blvd  
La Vista, NE 68128

Project 2011.519.00.I LaVista NE City of - Civic Ctr Park MP

**Professional Services through November 30, 2011**

**Fee**

Total Fee	80,780.00	
Percent Complete	22.00	Total Earned
		17,771.60
		Previous Fee Billing
		12,117.00
		Current Fee Billing
		5,654.60
		<b>Total Fee</b>
		<b>5,654.60</b>
		<b>Total this Invoice</b>
		<b>\$5,654.60</b>

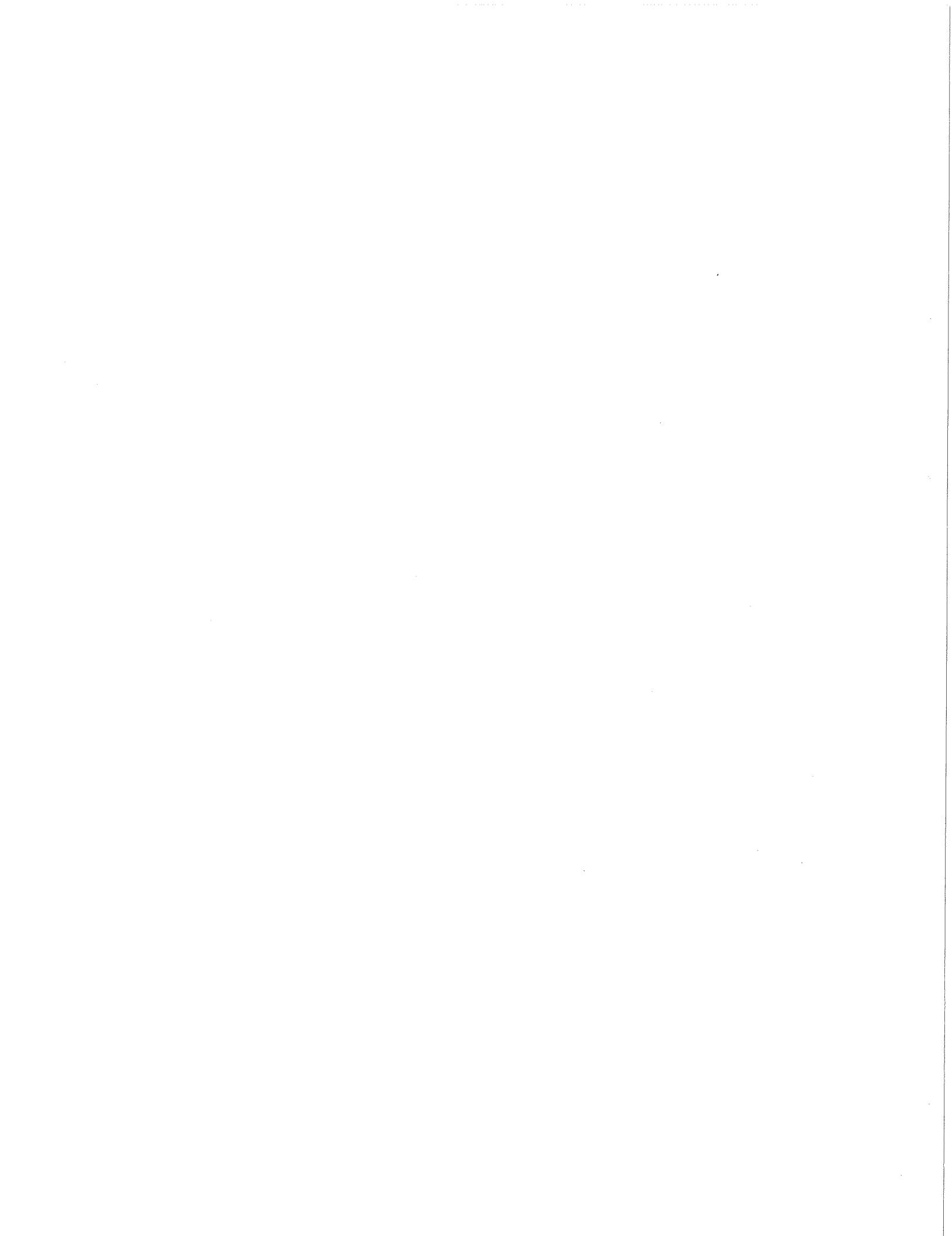
**Outstanding Invoices**

Number	Date	Balance
34350	10/31/2011	12,117.00
<b>Total</b>		<b>12,117.00</b>



05-71-0830.01







MERGING INNOVATION, TECHNOLOGY &amp; SERVICE

**Invoice**

**Invoice Number :** 030425  
**Order Number :** 172580  
**Invoice Date :** 11/28/2011

736 Federal Street Suite 2312 | Davenport, IA 52803 | 1(563) 323-0009

**BILL TO:** La Vista, City of  
9900 Portal Road

DEC - 1 2011

La Vista, NE 68128-3085  
USA

**SHIP TO:** La Vista, City of  
Attn: Jim Ruffner/Public Works Dept  
9900 Portal Road  
LA VISTA, NE 68128  
USA

**TAX ID #:****TAX ID #:**

SHIP METHOD	SHIP DATE	TERMS	DUE DATE	
TO BE DETERMINED	11/28/2011	NET30	12/28/2011	
QUANTITY	PART # / DESCRIPTION	PURCHASE ORDER	UNIT PRICE	EXTENDED PRICE
2.00	USA-LED-16-HAND/MAN/CD-X USA-LED-16-HAND/MAN/CD-X - 4306479001X 16" filled hand/man w/countdown (overlay) USA made	9/10-E062-Phase 2	\$0.0000	\$0.00
16.00	USA-LED-16-HAND/MAN/CD-X USA-LED-16-HAND/MAN/CD-X - 4306479001X 16" filled hand/man w/countdown (overlay) USA made	9/10-E062-Phase 2	\$131.7500	\$2,108.00
			<b>SUBTOTAL</b>	<b>\$2,108.00</b>
			<b>TAX</b>	<b>\$0.00</b>
			<b>FREIGHT</b>	<b>\$0.00</b>
			<b>TOTAL DUE</b>	<b>\$2,108.00</b>

All Above prices are in US dollars.

**TERMS OF PAYMENT:** Unless otherwise agreed with Seller's Credit Department, terms are: Net 30 days, F.O.B  
Shipping point.

**TAXES:** If parts ordered are exempt from taxes an exemption certificate must be furnished.

**RETURNS:** A Brown Traffic Products RMA # is required for returns - All returns are subject to a restocking fee.

**CLAIMS:** All claims for alleged defects shall be deemed waived unless made in writing within ten days after receipt of goods. Our liability shall be limited to the stated price of any defective goods, and shall in no event include special or consequential damage.

**LIEN ON CUSTOMER PROPERTY:** As security for payments of any sum due or to become due under the terms of this agreement, we shall have the right, if necessary, to retain possession of, and shall have a lien on all materials and any other property owned by you and in our possession and all work in process and undelivered work.

For additional information refer to the Brown Traffic Products Terms and Conditions document on our website at  
[www.browntraffic.com](http://www.browntraffic.com)

GET YOUR INVOICES AND/OR STATEMENTS IN A FLASH AND HELP THE ENVIRONMENT TOO! BROWN  
TRAFFIC PRODUCTS OFFERS A FREE SERVICE OF E-MAILING INVOICES AND/OR STATEMENTS STRAIGHT  
TO YOUR INBOX! Contact Sarah Beard at [sbeard@browntraffic.com](mailto:sbeard@browntraffic.com) to get setup today!

O.K. to pay  
01.20.0413  
JMK

12/10/2011

Packing List Number:

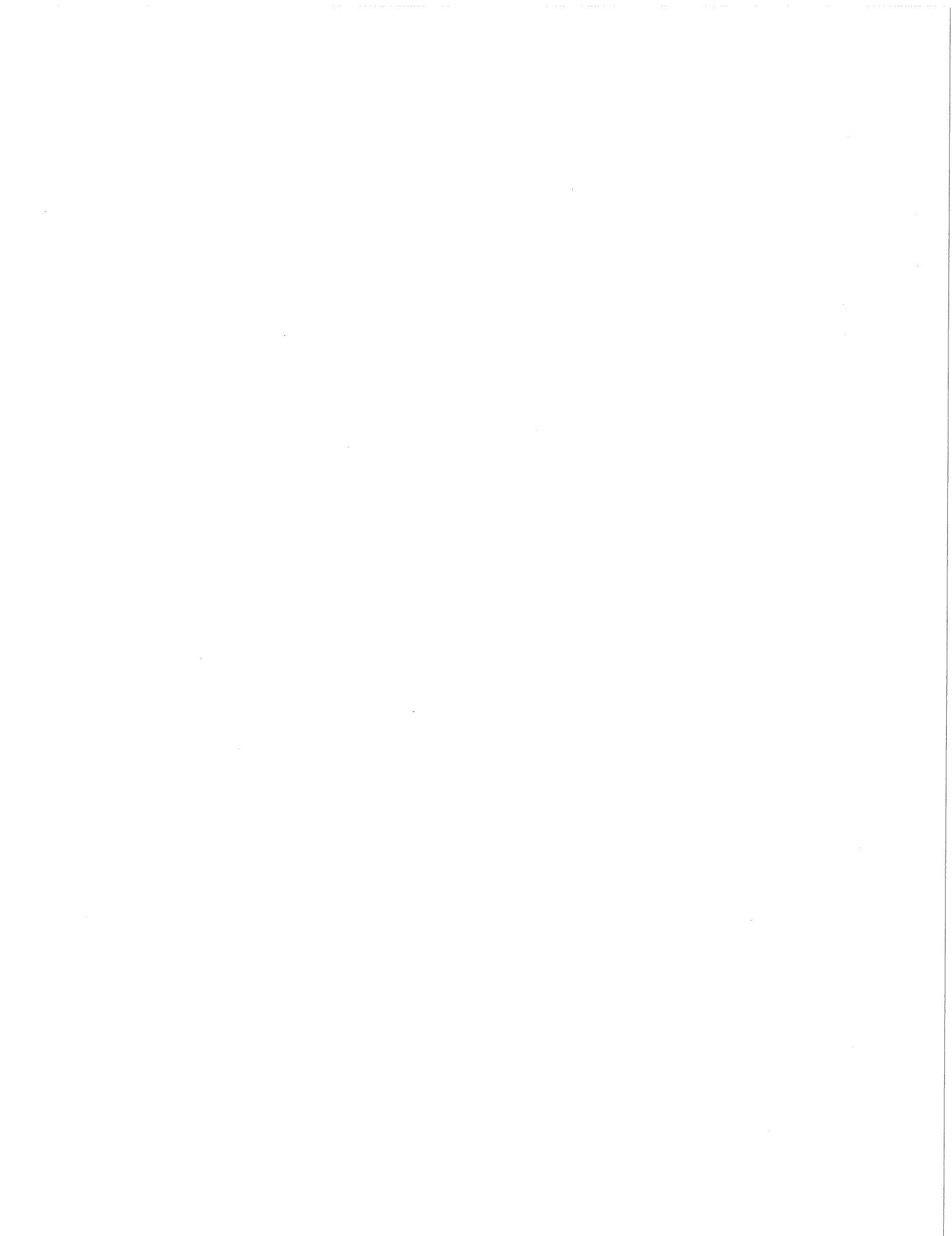
Consent Agenda

Camelot Manufacturing Edition

Monday, November 28, 2011

09:21AM

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**John Kottmann**

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**From:** Cathy Jorgensen [cjorgensen@browntraffic.com]  
**Sent:** Tuesday, December 06, 2011 3:23 PM  
**To:** John Kottmann  
**Subject:** RE: City of La Vista, Invoice No. 030425/SO#172580

John,

Good Afternoon. I checked on the remainder of the LED's and they are scheduled to ship on 12/19/11. I apologize – these were to ship all together and the vendor did not see that note on the order. I have made arrangements with our accounting department to extend the terms on the first invoice that you have already received so that you can make one payment for everything after you receive the invoice for the final shipment. If you have any questions or need anything else – just let me know.

Take care and I will talk with you later.

*Cathy Jorgensen*



MERGING INNOVATION, TECHNOLOGY & SERVICE  
736 Federal Street, Suite 2312 Davenport, IA 52803  
[www.browntraffic.com](http://www.browntraffic.com) 563.328.4470 (fax) 563.323.8256

**From:** John Kottmann [mailto:[jkottmann@cityoflavista.org](mailto:jkottmann@cityoflavista.org)]  
**Sent:** Tuesday, December 06, 2011 1:30 PM  
**To:** Cathy Jorgensen  
**Subject:** City of La Vista, Invoice No. 030425

Cathy

I have received your invoice #030425 for \$2,108 for 16 countdown LED modules. Can you advise when you anticipate the balance of the LED modules in our contract being available? The contract was written on the basis of making full payment at the time of receipt of all materials. If you need a partial payment prior to that happening, I will see what I can do in that regards.

Also, thank you for the two extra LED countdown modules that you provided.

John M. Kottmann, P.E.

City Engineer  
City of La Vista  
9900 Portal Road  
La Vista, NE 68128  
PH (402) 331 8927  
FX (402) 331 1051  
CELL(402) 669 9003  
[jkottmann@cityoflavista.org](mailto:jkottmann@cityoflavista.org)

The attached 2 invoices  
are in accordance with  
resolution passed on  
Nov. 15 for supplemental  
agreement with  
Brown Traffic for  
\$ 5,239.50

<sup>AB</sup>  
\$ 2108.00  
\$ 3131.50  
-----  
\$ 5239.50

*JK*  
12/10/11





MERGING INNOVATION, TECHNOLOGY &amp; SERVICE

**Invoice**

**Invoice Number :** 030659  
**Order Number :** 172580  
**Invoice Date :** 12/13/2011

736 Federal Street Suite 2312 | Davenport, IA 52803 | 1(563) 323-0009

**BILL TO:** La Vista, City of  
9900 Portal Road  
  
La Vista, NE 68128-3085  
USA

**SHIP TO:** La Vista, City of  
Attn: Jim Ruffner/Public Works Dept  
9900 Portal Road  
LA VISTA, NE 68128  
USA

**TAX ID #:****TAX ID #:**

SHIP METHOD	SHIP DATE	TERMS	DUE DATE	
TO BE DETERMINED	12/13/2011	NET30	01/12/2012	
QUANTITY	PART # / DESCRIPTION	PURCHASE ORDER	UNIT PRICE	EXTENDED PRICE
2.00	USA-LED-12-GRN-ARROW-XOD USA-LED-12-GRN-ARROW-XOD - 432-2374-001XOD 12" GRN ARROW LED CLEAR USA MADE	9/10-E062-Phase 2	\$37.0000	\$74.00
16.00	USA-LED-12-GRN-XL USA-LED-12-GRN-XL - 4332270001XL 12" Green clear LED ITE approved USA made	9/10-E062-Phase 2	\$38.0000	\$608.00
4.00	USA-LED-12-RED-ARROW-XOD USA-LED-12-RED-ARROW-XOD - 4321314001XOD 12" Red ARROW LED USA MADE	9/10-E062-Phase 2	\$40.0000	\$160.00
1.00	USA-LED-12-RED-XL USA-LED-12-RED-XL - 4331210003XL 12" Red LED ITE approved - USA made	9/10-E062-Phase 2	\$0.0000	\$0.00
8.00	USA-LED-12-RED-XL USA-LED-12-RED-XL - 4331210003XL 12" Red LED ITE approved - USA made	9/10-E062-Phase 2	\$32.7500	\$262.00
28.00	USA-LED-12-YEL-901XL USA-LED-12-YEL-901XL - 4333230901XL 12" Yellow LED, ITE approved (901 Low Watt) USA made	9/10-E062-Phase 2	\$42.2500	\$1,183.00
2.00	USA-LED-12-YEL-ARROW-901XOD USA-LED-12-YEL-ARROW-901XOD - 4313334901XOD 12" Yellow Arrow LED, ITE approved, Omni USA made	9/10-E062-Phase 2	\$34.2500	\$68.50
8.00	USA-LED-8-YEL-901XL USA-LED-8-YEL-901XL - 433-3130-901XL 8" Yellow LED, ITE Approved USA Made - 901 Low Watt	9/10-E062-Phase 2	\$97.0000	\$776.00
		SUBTOTAL	\$3,131.50	
		TAX	\$0.00	
		FREIGHT	\$0.00	

<b>TOTAL DUE</b>	<b>\$3,131.50</b>
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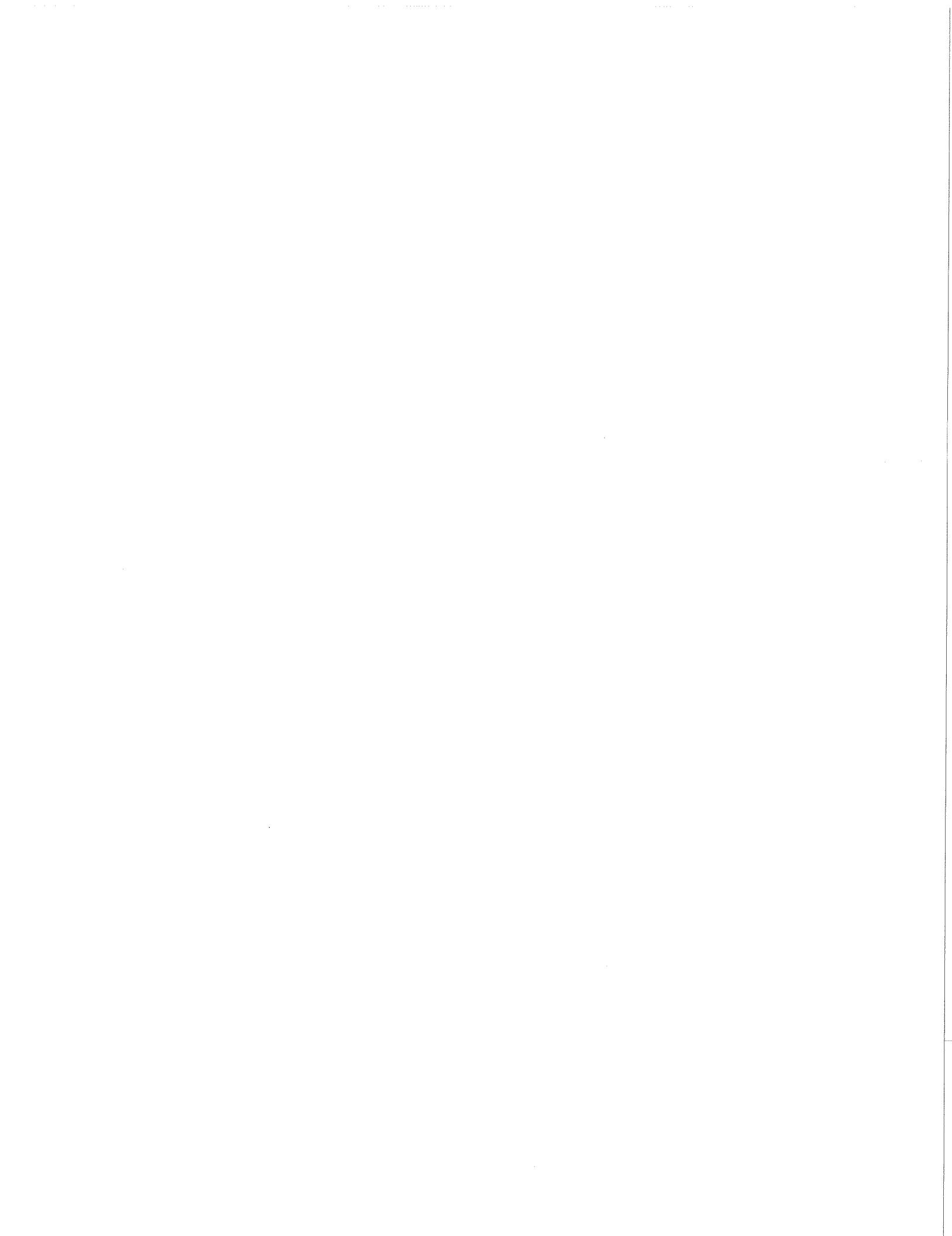
All Above prices are in US dollars.

O.K. to pay  
01.20.0413

QMK  
12/13/2011

Packing List Number:

Consent Agenda





MERGING INNOVATION, TECHNOLOGY & SERVICE

## Invoice

Invoice Number : 030659  
Order Number : 172580  
Invoice Date : 12/13/2011

736 Federal Street Suite 2312 | Davenport, IA 52803 | 1(563) 323-0009

**BILL TO:** La Vista, City of  
9900 Portal Road

La Vista, NE 68128-3085  
USA

**SHIP TO:** La Vista, City of  
Attn: Jim Ruffner/Public Works Dept  
9900 Portal Road  
LA VISTA, NE 68128  
USA

### TAX ID #:

### TAX ID #:

SHIP METHOD	SHIP DATE	TERMS	DUE DATE	
TO BE DETERMINED	12/13/2011	NET30	01/12/2012	
QUANTITY	PART # / DESCRIPTION	PURCHASE ORDER	UNIT PRICE	EXTENDED PRICE

**TERMS OF PAYMENT:** Unless otherwise agreed with Seller's Credit Department, terms are: Net 30 days, F.O.B

Shipping point.

**TAXES:** If parts ordered are exempt from taxes an exemption certificate must be furnished.

**RETURNS:** A Brown Traffic Products RMA # is required for returns - All returns are subject to a restocking fee.

**CLAIMS:** All claims for alleged defects shall be deemed waived unless made in writing within ten days after receipt of

goods. Our liability shall be limited to the stated price of any defective goods, and shall in no event include special or consequential damage.

**LIEN ON CUSTOMER PROPERTY:** As security for payments of any sum due or to become due under the terms of this agreement, we shall have the right, if necessary, to retain possession of, and shall have a lien on all materials and any other property owned by you and in our possession and all work in process and undelivered work.

For additional information refer to the Brown Traffic Products Terms and Conditions document on our website at  
[www.browntraffic.com](http://www.browntraffic.com)

GET YOUR INVOICES AND/OR STATEMENTS IN A FLASH AND HELP THE ENVIRONMENT TOO! BROWN TRAFFIC PRODUCTS OFFERS A FREE SERVICE OF E-MAILING INVOICES AND/OR STATEMENTS STRAIGHT TO YOUR INBOX! Contact Sarah Beard at [sbeard@browntraffic.com](mailto:sbeard@browntraffic.com) to get setup today!

Packing List Number:

Camelot Manufacturing Edition

Tuesday, December 13, 2011

01:26PM

Page 2 of 2





Thompson, Dreessen & Dorner, Inc.  
Consulting Engineers & Land Surveyors  
10836 Old Mill Road  
Omaha, NE 68154  
Office: 402-330-8860 Fax: 402-330-5866  
www.td2co.com

## INVOICE

CITY OF La VISTA  
John Kottmann  
8116 PARKVIEW BOULEVARD  
LA VISTA, NE 68128

Invoice number 93037  
Date 12/21/2011  
Project 0171-392 APPLEWOOD CREEK  
IMPROVEMENTS

Professional Services from November 14, 2011 through December 11, 2011

#12-0093

Description	Current Billed
Engineering Services-Prepare Construction Drawings-90% Complete	4,783.45
Total	4,783.45

Invoice total 4,783.45

Terms Net 30 Days. A Finance Charge of 1 1/2% Per Month (18% per Annum) Will Be Charged on Past Due Accounts. Also Liable for all Legal and Collection Fees.

O.K. to pay \$4,783.45  
05.71.08 15.02

efmk  
12/21/2011

Consent Agenda

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
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1 Bank of Nebraska (600-873)

46168 Payroll Check

46169 Gap in Checks

Thru 106015

106016	12/21/2011	4326	MIDWEST RIGHT OF WAY SVCS INC	680.00	**MANUAL**
106017	12/21/2011	3753	MULLEN & MULLEN	6,662.50	**MANUAL**
106018	12/21/2011	4653	RDG PLANNING & DESIGN	12,117.00	**MANUAL**
106019	12/21/2011	3702	LAUGHLIN, KATHLEEN A, TRUSTEE	474.00	**MANUAL**
106020	1/03/2012	804	3E-ELECTRICAL ENGINEERING	469.89	
106021	1/03/2012	4624	911 CUSTOM	153.39	
106022	1/03/2012	571	ALAMAR UNIFORMS	.00	**CLEARED** **VOIDED**
106023	1/03/2012	571	ALAMAR UNIFORMS	684.44	
106024	1/03/2012	557	APWA-AMER PUBLIC WORKS ASSN	699.00	
106025	1/03/2012	536	ARAMARK UNIFORM SERVICES INC	383.46	
106026	1/03/2012	706	ASSOCIATED FIRE PROTECTION	465.50	
106027	1/03/2012	4649	AWARDS UNLIMITED	31.57	
106028	1/03/2012	201	BAKER & TAYLOR BOOKS	918.85	
106029	1/03/2012	2554	BARCAL, ROSE	54.39	
106030	1/03/2012	929	BEACON BUILDING SERVICES	6,712.00	
106031	1/03/2012	793	BENNETT REFRIGERATION	308.96	
106032	1/03/2012	410	BETTER BUSINESS EQUIPMENT	53.19	
106033	1/03/2012	196	BLACK HILLS ENERGY	7,926.13	
106034	1/03/2012	56	BOB'S RADIATOR REPAIR CO INC	148.00	
106035	1/03/2012	4454	BRAKE, AUSTIN	100.00	
106036	1/03/2012	4647	BREWER, WILLIAM ANDREW	100.00	
106037	1/03/2012	76	BUILDERS SUPPLY CO INC	150.69	
106038	1/03/2012	1294	CAPSTONE	615.51	
106039	1/03/2012	219	CENTURY LINK	119.23	
106040	1/03/2012	3176	COMP CHOICE INC	.00	**CLEARED** **VOIDED**
106041	1/03/2012	3176	COMP CHOICE INC	1,201.00	
106042	1/03/2012	4615	CONSOLIDATED MANAGEMENT	41.25	
106043	1/03/2012	4435	CORE PRODUCTS USA	556.68	
106044	1/03/2012	836	CORNHUSKER INTL TRUCKS INC	94.54	
106045	1/03/2012	2158	COX COMMUNICATIONS	122.24	
106046	1/03/2012	3136	D & D COMMUNICATIONS	393.00	
106047	1/03/2012	59	DITCH WITCH OF OMAHA	185.00	
106048	1/03/2012	127	DON'S PIONEER UNIFORMS	158.00	
106049	1/03/2012	3205	DOOR EXPRESS INCORPORATED	67.00	
106050	1/03/2012	2149	DOUGLAS COUNTY SHERIFF'S OFC	37.50	
106051	1/03/2012	364	DULTMEIER SALES & SERVICE	4.76	
106052	1/03/2012	159	DXP ENTERPRISES INC	230.96	
106053	1/03/2012	4559	EASTERN NEBR SOCCER ASSN	515.00	
106054	1/03/2012	3334	EDGEWEAR SCREEN PRINTING	133.00	
106055	1/03/2012	4012	EMBASSY SUITES HOTEL	184.61	
106056	1/03/2012	1042	FELD FIRE	122.00	
106057	1/03/2012	3739	FELSBURG HOLT & ULLEVIG	1,105.51	
106058	1/03/2012	1245	FILTER CARE	26.55	
106059	1/03/2012	3132	FORT DEARBORN LIFE INSURANCE	1,373.50	

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
106060		106060	1/03/2012	4050	FROEHLICH, RORY	100.00			
106061		106061	1/03/2012	3984	G I CLEANER & TAILORS	254.45			
106062		106062	1/03/2012	1344	GALE	187.47			
106063		106063	1/03/2012	53	GCR TIRE CENTERS	66.95			
106064		106064	1/03/2012	4487	GIBSON, JOHN	125.00			
106065		106065	1/03/2012	4340	GIFF PROPERTY SERVICES	1,800.00			
106066		106066	1/03/2012	2877	GRAPHIC SCREEN PRINTING	68.00			
106067		106067	1/03/2012	4086	GREAT PLAINS UNIFORMS	75.50			
106068		106068	1/03/2012	71	GREENKEEPER COMPANY INC	490.00			
106069		106069	1/03/2012	1044	H & H CHEVROLET LLC	170.12			
106070		106070	1/03/2012	426	HANEY SHOE STORE	120.00			
106071		106071	1/03/2012	4422	HAWKEYE TRUCK EQUIPMENT	6,060.00			
106072		106072	1/03/2012	3657	HEARTLAND PAPER	295.00			
106073		106073	1/03/2012	2407	HEIMES CORPORATION	75.00			
106074		106074	1/03/2012	1151	ICMA-INTL CITY/COUNTY MANAGE	796.06			
106075		106075	1/03/2012	3440	ICSC-INTL COUNCIL OF SHPG CTRS	200.00			
106076		106076	1/03/2012	1896	J Q OFFICE EQUIPMENT INC	498.22			
106077		106077	1/03/2012	4650	JAPP INDUSTRIES	30.00			
106078		106078	1/03/2012	1054	KLINKER, MARK A	200.00			
106079		106079	1/03/2012	2394	KRIHA FLUID POWER CO INC	108.73			
106080		106080	1/03/2012	2057	LA VISTA COMMUNITY FOUNDATION	50.00			
106081		106081	1/03/2012	4425	LANDPORT SYSTEMS INC	125.00			
106082		106082	1/03/2012	787	LERNER PUBLISHING GROUP	13.46			
106083		106083	1/03/2012	2380	LEXIS NEXIS MATTHEW BENDER	132.46			
106084		106084	1/03/2012	4213	LIBERTY FLAG & SPECIALTY CO	538.70			
106085		106085	1/03/2012	919	MARTIN MARIETTA AGGREGATES	454.35			
106086		106086	1/03/2012	4652	MASON, BAILEY	40.00			
106087		106087	1/03/2012	877	MATHESON TRI-GAS INC	543.01			
106088		106088	1/03/2012	153	METRO AREA TRANSIT	617.00			
106089		106089	1/03/2012	872	METROPOLITAN COMMUNITY COLLEGE	14,958.81			
106090		106090	1/03/2012	553	METROPOLITAN UTILITIES DIST.	.00	**CLEARED**	**VOIDED**	
106091		106091	1/03/2012	553	METROPOLITAN UTILITIES DIST.	.00	**CLEARED**	**VOIDED**	
106092		106092	1/03/2012	553	METROPOLITAN UTILITIES DIST.	2,082.72			
106093		106093	1/03/2012	2497	MID AMERICA PAY PHONES	50.00			
106094		106094	1/03/2012	1526	MIDLANDS LIGHTING & ELECTRIC	71.44			
106095		106095	1/03/2012	2299	MIDWEST TAPE	1,117.31			
106096		106096	1/03/2012	4085	MNJ TECHNOLOGIES DIRECT INC	.00	**CLEARED**	**VOIDED**	
106097		106097	1/03/2012	4085	MNJ TECHNOLOGIES DIRECT INC	1,637.16			
106098		106098	1/03/2012	370	NEBRASKA LAW ENFORCEMENT	80.00			
106099		106099	1/03/2012	548	NEBRASKA CLERK INSTITUTE	393.00			
106100		106100	1/03/2012	2685	NEBRASKA TURF PRODUCTS	403.76			
106101		106101	1/03/2012	3284	NEBRASKA TURFGRASS ASSOCIATION	250.00			
106102		106102	1/03/2012	3303	NEBRASKA WELDING LTD	466.17			
106103		106103	1/03/2012	2631	NEXTEL SPRINT COMMUNICATIONS	449.08			
106104		106104	1/03/2012	2631	NEXTEL SPRINT COMMUNICATIONS	204.67			
106105		106105	1/03/2012	179	NUTS AND BOLTS INCORPORATED	366.53			
106106		106106	1/03/2012	1808	OCLC INC	26.18			
106107		106107	1/03/2012	1014	OFFICE DEPOT INC	.00	**CLEARED**	**VOIDED**	
106108		106108	1/03/2012	1014	OFFICE DEPOT INC	.00	**CLEARED**	**VOIDED**	
106109		106109	1/03/2012	1014	OFFICE DEPOT INC	497.65			
106110		106110	1/03/2012	46	OMAHA WORLD HERALD COMPANY	85.80			
106111		106111	1/03/2012	2129	OMB EXPRESS POLICE SUPPLY	170.80			
106112		106112	1/03/2012	976	PAPILLION TIRE INCORPORATED	81.15			

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
106113	2686 PARAMOUNT LINEN & UNIFORM		1/03/2012			.00	**CLEARED**	**VOIDED**	
106114	2686 PARAMOUNT LINEN & UNIFORM		1/03/2012			546.99			
106115	4553 PARTSMASTER		1/03/2012			122.24			
106116	3058 PERFORMANCE CHRYSLER JEEP		1/03/2012			656.10			
106117	74 PITNEY BOWES INC-PA		1/03/2012			.00	**CLEARED**	**VOIDED**	
106118	74 PITNEY BOWES INC-PA		1/03/2012			204.00			
106119	1784 PLAINS EQUIPMENT GROUP		1/03/2012			1,266.45			
106120	1237 POLICE CHIEF'S ASSN OF NEBR		1/03/2012			50.00			
106121	1921 PRINCIPAL LIFE-FLEX SPENDING		1/03/2012			216.00			
106122	3446 PRO-PAPILLION RECREATION ORG		1/03/2012			3,160.00			
106123	802 QUILL CORPORATION		1/03/2012			177.78			
106124	58 RAINBOW GLASS & SUPPLY		1/03/2012			37.80			
106125	1121 RALSTON ADVERTISING		1/03/2012			35.00			
106126	1770 RUFFNER, JAMES		1/03/2012			107.01			
106127	487 SAPP BROS PETROLEUM INC		1/03/2012			.00	**CLEARED**	**VOIDED**	
106128	487 SAPP BROS PETROLEUM INC		1/03/2012			18,925.94			
106129	2240 SARPY COUNTY COURTHOUSE		1/03/2012			3,479.89			
106130	503 SCHOLASTIC LIBRARY PUBLISHING		1/03/2012			709.80			
106131	2927 SEAT COVER CENTER OF NEBRASKA		1/03/2012			250.00			
106132	4641 SHRED-SAFE LLC 2011-2012		1/03/2012			15.00			
106133	533 SOUCIE, JOSEPH H JR		1/03/2012			44.00			
106134	3838 SPRINT		1/03/2012			67.98			
106135	3838 SPRINT		1/03/2012			62.08			
106136	4184 STEPANEK, VICTOR		1/03/2012			218.34			
106137	47 SUBURBAN NEWSPAPERS INC		1/03/2012			79.00			
106138	332 SUSPENSION SHOP INCORPORATED		1/03/2012			28.17			
106139	913 TARGET BANK		1/03/2012			166.25			
106140	264 TED'S MOWER SALES & SERVICE		1/03/2012			9.15			
106141	4648 TENNIS LTD		1/03/2012			157.12			
106142	822 THERMO KING CHRISTENSEN		1/03/2012			136.01			
106143	161 TRACTOR SUPPLY CREDIT PLAN		1/03/2012			101.90			
106144	2710 ULTRAMAX		1/03/2012			1,969.40			
106145	988 UPSTART		1/03/2012			101.58			
106146	2720 USI EDUCATION/GOV'T SALES		1/03/2012			104.19			
106147	4223 VAIL, ADAM		1/03/2012			100.00			
106148	809 VERIZON WIRELESS		1/03/2012			191.57			
106149	1174 WAL-MART COMMUNITY BRC		1/03/2012			.00	**CLEARED**	**VOIDED**	
106150	1174 WAL-MART COMMUNITY BRC		1/03/2012			607.74			
106151	3150 WHITE CAP CONSTR SUPPLY/HDS		1/03/2012			125.00			
106152	968 WICK'S STERLING TRUCKS INC		1/03/2012			56.60			

BANK TOTAL	118,492.59
OUTSTANDING	118,492.59
CLEARED	.00
VOIDED	.00

FUND	TOTAL	OUTSTANDING	CLEARED	VOIDED
01 GENERAL FUND	90,486.76	90,486.76	.00	.00
02 SEWER FUND	12,369.99	12,369.99	.00	.00
05 CONSTRUCTION	13,015.34	13,015.34	.00	.00
08 LOTTERY FUND	145.40	145.40	.00	.00
09 GOLF COURSE FUND	2,231.12	2,231.12	.00	.00
15 OFF-STREET PARKING	243.98	243.98	.00	.00

BANK NO BANK NAME

CHECK NO DATE

VENDOR NO VENDOR NAME

CHECK AMOUNT

CLEARED

VOIDED

MANUAL

REPORT TOTAL	118,492.59
OUTSTANDING	118,492.59
CLEARED	.00
VOIDED	.00
+ Gross Payroll 12/23/11	<u>238,225.55</u>
GRAND TOTAL	<u>\$356,718.14</u>

APPROVED BY COUNCIL MEMBERS 01/03/12

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**JANUARY 3, 2012 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
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 114<sup>th</sup> Street, Giles Road (from 114<sup>th</sup> to 108<sup>th</sup> Streets) and in 108<sup>th</sup> 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 and City Engineer have reviewed the agreement and a final version has been agreed upon with Unite Private Networks, LLC subject to Council approval.

K:\APPS\City Hall\CNCLRPT\12file\12 PW Communications Facilities Agmt With Unite Private Networks LLC.Doc

**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 3RD DAY OF JANUARY, 2012

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

## COMMUNICATIONS CABLE AND FACILITIES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of January, 2012 ("Effective Date") by and between UNITE PRIVATE NETWORKS, LLC, a Delaware Limited Liability Company, whose address for notice purposes under this Agreement is 950 W. 92 Highway, Kearney, MO 64060 ("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, 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 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 initial installation and placement of City Fibers are more specifically described in EXHIBIT C. As PERMITTEE in the future installs additional conduit and fiber within the city limits of CITY, in enlargement or expansion of PERMITTEE'S initially installed Communications Facilities, CITY shall have the option to require PERMITTEE to simultaneously install in PERMITTEE'S conduit(s) (or other runs) twelve (12) optical fibers for the exclusive use and benefit of CITY, as additional City Fibers, throughout all or any portion (as CITY may direct) of PERMITTEE'S expansion or enlargement of its Communications Facilities.

As such additional City Fibers may be installed in the future, EXHIBIT C shall be amended and updated accordingly.

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 eighteen (18) cents (\$.18) 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.) The rate of eighteen (18) cents (\$.18) per lineal foot of City Fibers installed by PERMITTEE shall apply to all City Fibers installed by PERMITTEE within ten (10) years after the date of this Agreement; the rate for City Fiber installed more than ten (10) years after the date of this Agreement shall be subject to negotiation between PERMITTEE and CITY. At CITY'S option, payment for the installation and use of City Fibers by CITY may be 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. To the extent CITY exercises the option under this subparagraph 7(A) to grant occupation tax credits in lieu of making payments under this subparagraph, a true-up payment under Section 10 shall apply if such credits are insufficient to fully compensate PERMITTEE at the rate specified above.
- (B) Within twenty (20) business days after CITY so requests, PERMITTEE shall 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, provided that such access points do not materially interfere with any PERMITTEE facilities. PERMITTEE shall invoice CITY for all "Connection Charge" expenses (including costs incurred by PERMITTEE in providing oversight of any contractors excavating on the Rights of Way or near the Cable to make such connection). CITY shall pay within sixty (60) days after receiving such invoice.
- (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, subject to Connection Charge costs of subparagraph (B) above, 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.

There shall be no monthly recurring expenses or associated costs to CITY for connections with other entities noted in this subparagraph (D). The CITY shall remain responsible for additional expenses that may occur as delineated in subparagraph (E) below.

- (E) PERMITTEE, at its own cost, shall perform routine maintenance and repair the City Fibers so as to assure continuing conformity of the City Fibers with PERMITTEE'S operating specifications. Where damage has occurred to City Fibers and this damage is due to no fault of PERMITTEE, PERMITTEE shall repair City Fibers and invoice the CITY for the required repairs. Costs to the CITY shall be the actual invoice cost for such repair plus 21%. PERMITTEE shall provide actual documentation for such repair that shall be included with the invoice to the CITY. 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. "Promptly repair" shall mean that the repair work will be completed within two (2) business days after PERMITTEE receives written notification from CITY, or verbal notification confirmed by subsequent written or electronic transmission from CITY, of the need for repair.
- (F) Legal title to the PERMITTEE'S facilities including the fiber optic communications system, including fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers and other hardware needed or used to fasten or support the cable shall be held by PERMITTEE. Neither anything contained in this Agreement, nor any use, however extended, of the City Fibers, nor any placement of CITY'S facilities on or in the private network, shall create or vest (or be construed as creating or vesting) in CITY any right, title or interest in or to any real or personal property owned by PERMITTEE other than the rights contained in this Agreement for the City Fibers. Property abandoned in place by PERMITTEE under EXHIBIT A, however, shall become the property of CITY on its abandonment by PERMITTEE. Legal title to all property of the CITY shall remain with the CITY, and nothing herein shall be deemed to relinquish CITY'S right, title, interest or control of such property, including public rights of way.

**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 the La Vista Municipal Code, Chapter 113, Section 113.07. To the extent CITY exercises the option under subparagraph 7(A) to grant occupation tax credits to PERMITTEE in lieu of making payments under that subparagraph, PERMITTEE shall be entitled to a credit or credits against such tax for any amount due from CITY under subparagraph 7(A) of this Agreement. PERMITTEE shall file at least 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. Additionally, the CITY acknowledges that PERMITTEE is subject to the requirements of section H of EXHIBIT A.

**10. TRUE-UP PAYMENT BY CITY.** To the extent the CITY exercises the option to grant occupation tax credits to PERMITTEE under subparagraph 7(A) in lieu of making payments under that subparagraph and such occupation tax incurred by the PERMITTEE after the first five years of this Agreement is less than the cost of City Fibers provided and installed for the CITY based on the calculation under Section 7(A) above, the CITY shall be responsible for paying the balance owing to PERMITTEE. A request for payment will be provided to CITY by PERMITTEE in a form of invoice ("Final Invoice) that shall be paid by CITY within 60 days after receipt by CITY. PERMITTEE is responsible for providing all calculations and subsequent backup for the Final Invoice. For each subsequent addition to EXHIBIT C, a new five-year

period shall commence, with respect to the additional City Fiber, upon the installation of the additional City Fibers. PERMITTEE will be responsible for maintaining records for all active periods. The CITY may request an accounting of these records, which shall be provided by PERMITTEE within forty five (45) days of receipt of request.

**11. 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.

**12. 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.

**13. 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.

**14. TERM OF AGREEMENT; TERMINATION.** This Agreement shall continue in force and effect for a period of twenty (20) 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 twenty-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.

**15. 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.

**16. 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, 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 be liable for delays caused by the inaction of utilities, local exchange carriers, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the Communications Facilities.

CITY OF LA VISTA, NEBRASKA,

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

ACCEPTED AND AGREED TO:  
UNITE PRIVATE NETWORKS, LLC

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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City Attorney

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## **EXHIBIT A**

### **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 a 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 resolutions 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 produced to a scale as specified by the City representatives during discussion and review of the initial application. The plans 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, 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 depth is directed by the Public Works Department in writing. In no instances 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), 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 on-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).

The Comprehensive General Liability Insurance coverage described in Section D(2)(A) above and the Automotive Liability Insurance coverage described in Section D(2)(B) above may each be provided by one or more policies of insurance, including umbrella liability policies, which in combination are sufficient to provide the minimum limit of liability coverage specified.

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 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 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 the 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**

- (1) If Permittee
  - (a) fails to make any required payment to the City within thirty (30) days after the due date, or

(b) fails or neglects to comply with any material provision of this statement of policy, these specifications, the permit, the agreement, or any other 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 Council 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 call 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 or 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 the 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 or warning signing or cautionary flagging not actually performed by Permittee and for all other actual direct and indirect expenses incurred by the City in regulating Permittee's use of public right-of-way pursuant to the permit and the agreement. (2)

All 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 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 FOR PUBLIC USE PROVIDERS**

- (1) 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 fee 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. Communications 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 as 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, or warning signing and cautionary flagging not 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 this document.