



City of Omaha
Jean Stothert, Mayor

October 22, 2013

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CITY OF
OMAHA, NE

Public Works Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183-0601
(402) 444-5220
Fax (402) 444-5248

Robert G. Stubbe, P.E.
Public Works Director

Honorable President

and Members of the City Council,

The attached Resolution approves the Communications Cable and Facilities Agreement between Alegent Creighton Health and the City of Omaha. This Agreement grants permission to Alegent Creighton Health to install and operate communication facilities within City Right of Way.

This Agreement stipulates the conditions of approval to install communication facilities within City Right of Way, as well as applicability of fees.

The Public Works Department requests your consideration and approval of the attached Resolution and Communications Cable and Facilities Agreement.

Respectfully submitted,

This action has been reviewed and found to be in conformance with the Master Plan.

Robert G. Stubbe 9-30-13
RH Robert G. Stubbe, P.E. Date
Public Works Director

James R. Thele 10/3/13
C James R. Thele Date
Acting Planning Director

Approved as to Funding:

Referred to City Council for Consideration:

Allen Herink 10-2-13
DD Allen Herink Date
Acting Finance Director

Jean Stothert 10/4/13
Jean Stothert Date
Mayor's Office

CITY OF OMAHA

LEGISLATIVE CHAMBER

Omaha, Nebraska

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, Alegent Creighton Health proposes to install overhead and/or underground communication cable in City Right of Way; and,

WHEREAS, Alegent Creighton Health will submit plans to the Public Works Department pursuant to the terms of the agreement; and,

WHEREAS, a Communications Cable and Facilities Agreement has been prepared setting forth all the provisions mentioned above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT, the Communications Cable and Facilities Agreement between the City of Omaha and Alegent Creighton Health, as recommended by the Mayor, providing for the installation of communication cable in City Right of Way is hereby approved. The location of the communication cable will be reviewed and approved by the Public Works Department.

P:\rah\1144rah.doc

APPROVED AS TO FORM:


ASST CITY ATTORNEY 10 OCT 13
DATE

By.....
Councilmember

Adopted.....
.....
City Clerk

Approved.....
Mayor

COMMUNICATIONS CABLE AND FACILITIES AGREEMENT

THIS AGREEMENT is made and executed effective as of this ___ day of _____ by and between Alegent Creighton Health, whose address for notice purposes under this Agreement is The McAuley Center, 12809 W. Dodge Rd. Ste. 300 Omaha, NE 68154 (“Permittee”) and THE CITY OF OMAHA, NEBRASKA, a municipal corporation organized under the laws of the State of Nebraska (“City”).

In consideration of the covenants and agreements herein contained, the parties agree as follows:

1. In consideration of and pursuant to the “Statement of Policy and Standard Specifications for Communications Cable on City Property,” attached hereto as Exhibit “A” and incorporated herein, and of the conditions hereinafter set out, City hereby grants and gives to Permittee its consent to survey and construct, subsequent to acquisition of all necessary permits and payment of all applicable fees, and then install, operate, inspect, maintain, protect, repair, alter, replace or remove its communications facilities, as shown 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 dated and attached hereto and made a part hereof. The communication facilities referred to herein shall consist of existing or future underground conduits, cables, wires, splicing boxes, and appropriate appurtenances located on, above or beneath the surface of any street, alley, sidewalk or other public ground with the City. The grant contained in this paragraph includes the right of reasonable access to Permittee’s communications facilities.
2. Permittee shall secure all permits required to be issued by the appropriate City officials in connection with the installation of the communications facilities which shall be laid substantially in accordance with plans and specifications submitted to and approved by the City and subject to specific conditions as may be set forth from time to time in the permits granted pursuant hereto, which permits, plans, and specifications shall be attached hereto as Exhibit “B.”
3. This Agreement shall be binding upon and inure to the benefits 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. This Agreement shall not be effective until the execution of this Agreement by the City has been approved by resolution of its City Council.
5. Permittee and/or the contractors from time to time employed, used or hired to plan, construct or maintain said communications system shall not, in the performance of the aforementioned work, discriminate or permit discrimination in violation of state or federal law on account of race, color sex, age, disability, political or religious opinions, affiliations or national origin.

6. Pursuant to Section 8.05 of the Home Rule Charter of the City of Omaha (the "HRC"), no elected official or officer or employee of the City shall have a financial interest, direct or indirect in any City contract. Any violation of this section, with the knowledge of the person or corporation entering into said contract with the City may render said contract voidable by the City Council. City recognizes and acknowledges that ownership of less than controlling shares of stock of Permittee by an elected officer/employee of the City does not render this Agreement void or voidable.

7. 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 such rights.

8. This Agreement, including the permits granted pursuant to it, encompasses the entire agreement upon 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 hereof, unless done in writing and signed by an authorized officer of the respective parties hereto.

The City of Omaha

Mayor

Attest: _____
City Clerk

ACCEPTED AND AGREED TO:

By: James V. Burgart
Title: RCIO
Date: September 24, 2013

Attest: David J. Peters
Title: Sr. ENA
Date: 9/24/13

APPROVED AS TO FORM:

[Signature] 10 OCT 13
ASSY. DEPUTY CITY ATTORNEY

**STATEMENT OF POLICY AND STANDARD SPECIFICATIONS FOR
COMMUNICATIONS CABLE ON CITY PROPERTY.**

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 Omaha for the installation, operation and maintenance of any underground fiber optic cable, coaxial cable, or any other communication cable, line or appurtenance, unless such person has received a permit therefore granted by agreement approved by Resolution of the City Council or as otherwise provided herein. This policy shall not apply to any cable installed or operated by the holder of any City franchise under its terms for telephone or cable communications purposes wherein such telephone, communications, or cable television service is provided to the inhabitants of the City as described in such franchise.

SECTION B – APPLICATION FOR PERMIT

(i) Application for such permit shall be made to the Permits and Inspections Division of the Planning 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 is to be shared by a number of users, and the carrying capacity and diameter of the cable or other facilities being installed. In addition thereto, the Permits and Inspections Division or the Public Works Department may request such additional information as they deem reasonable or 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 specifica-

tions, shall be referred to the City Council for an agreement to be approved by Resolution prior to the granting of any permit. Other permits (for which such an Agreement is in effect) may be granted by the Permits and Inspections Division with the approval of the Public Works Department.

(ii) Following initial application and discussions with the Public Works Department concerning the placement of such cable and its appurtenances, the applicant shall supply accurate drawings sealed by a Nebraska-licensed professional engineer produced to a scale of one inch equaling fifty feet. The plans shall be 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 conflicts with other utility structures and conduits.

(iii) Thirty days after completion of the work, as-built construction drawings, signed and certified by a Nebraska-licensed professional engineer, must also be submitted to the Public Works Department on Mylar and a C.D. with each sheet being a .tif file. Updated route maps and required drawings must be provided to the Public Works Department whenever a change is made to the approved cable 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 in public streets shall comply with Article II of Chapter 34 of the Omaha Municipal Code, except that the provisions concerning bonds contained within this policy shall control. Where the cable is located beneath the pavement in all major traffic streets and arterial streets, the minimum depth from the top of the cable to the surface of the ground shall be thirty inches. Cable buried beneath residential streets shall have a

minimum depth of twenty-four inches. In no instances shall cable be buried to a depth of less than twenty-four inches. Pull boxes and other items shallower than the depth above specified shall be clearly shown on the completed plans covering the installation work.

(ii) All land surfaces and all pavement shall be restored to the same or similar conditions existing prior to the Permittee's construction, and shall comply with Article II of Chapter 34 of the Omaha Municipal 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 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 current City Ordinances and specifications.

SECTION D – BOND, INSURANCE AND PUBLIC LIABILITY

(i) Every applicant for such permit shall file with the City a continuing bond in the amount of Fifty Thousand dollars (\$50,000.00) to cover all construction efforts during the term of this Agreement or until Permittee is no longer operating its telecommunications facilities within the City, whichever is sooner. All bonds and sureties shall be approved by the City before such permit becomes effective. All bonds shall be conditioned that the person to whom such permit shall be issued, and their heirs, successors and assigns, shall save and keep the City free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the space therein mentioned (except those arising from the City's negligence or intentional misconduct), and for the maintenance of the street, alley, sidewalk or other public ground in such condition that the street, alley sidewalk or other public ground shall at all times after the completion of the work be safe for public use; for the full and complete protection of the City against

any and all litigation growing out of the granting of such permit or anything done under such permit (except to the extent previously specified), and for the removal of any cable or other facility buried by the Permittee to the extent that the same is required by the City, at the sole expense of the Permittee or its appropriate heirs, successors or assigns; for the faithful performance and observance of all of the terms and conditions of this division and the conditions and provisions of Article II of Chapter 34 of the Omaha Municipal Code; and such bond shall also be conditioned for the prompt and full payment of the compensation required by this division, or by any other Ordinance, during the period said permit shall be outstanding. Following the issuance of such permit, and as long as the use continues in such public space, the owners of the permitted facility from time to time shall also be responsible to the City for the performance of all of the conditions of the bond above described.

Whenever the City shall be of the opinion that the surety on such bond given for such permit issued hereunder has become insufficient and shall so declare in writing sent by regular U.S. Mail to the applicant, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City.

(ii) In addition to the bond, the applicant shall at all times have in full force and effect a policy of liability insurance in the minimum amount of One Million Dollars (\$1,000,000.00) for the injury or death of any number of persons per occurrence, and Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage per occurrence. Such coverage shall name the City of Omaha as an additional insured, as its interest may appear, for all acts and omissions of Permittee, its agents and contractors arising out of or in any way connected with the permit and their use and occupation of the public right-of-way. All such policies and certificates in insurance shall be issued by companies authorized to do business in the State of Nebraska and shall be

approved by the City of Omaha Law Department prior to the commencement of such use and provide that any such policy shall not be cancelled until thirty (30) days' written notice of such cancellation shall have been filed with the City Clerk. Any termination or lapse of such insurance will automatically revoke any permit issued pursuant to this division.

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 under any street, alley, sidewalk or public ground in such manner as to interfere with any traffic control or energy cable, sewer, gas or water conduit, or any other public facilities or utilities lawfully in such street, alley, sidewalk or other public space unless by consent of the City specially granted in the permit. Whenever any applicant or permittee under this policy 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 control of the City of Omaha or other public entity controlling such public facility, 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.

(ii) All work undertaken by the applicant or permittee which requires inspection by the City shall be performed subject to the requirement that the City be fully reimbursed for its reasonable and documented inspection costs, whether the same are part of the initial installation or the relocation of either permittee's facilities or those belonging to the City or any other utility service.

(iii) In addition thereto, all permits governed by these specifications are granted subject to the requirement that whenever any work is initiated by the City of Omaha, the State of Nebraska, Douglas County, the Omaha Public Power District or the Metropolitan Utilities Dis-

tract, or any other publicly owned body, the facilities of the applicant must be relocated within a reasonable time, not to exceed sixty (60) days from written demand for the same, in order to reasonably accommodate such public use. If the permittee fails to undertake or cause the relocation of its facility within a reasonable time, then the City of Omaha retains the right to relocate or allow relocation of the cable and other appurtenant facilities and to assess and collect the reasonable and documented cost from the permittee or any other owner of the facility if the same fail to relocate the cable in a timely manner.

(iv) The 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 the City, any public entity, or any other persons, permitted to do work in the street right-of-way, detailed and accurate information concerning the locations, whether in plan, section or profile, or any combination of the same, of the permittee's cable, appurtenances or other facilities. This requirement can be satisfied by the permittee's utilization of a local utility locating service maintained by others, or this provision may be satisfied by any other local, competent agency.

(v) The permittee, its heirs, successors and assigns, shall at all times remain responsible for injuries to its cable, its appurtenances and other facilities injured by any party and due to any inaccuracies in the information given with respect to such facility's location. The City of Omaha, and all other parties working on public property, shall be responsible for injuries to the permittee's facilities only to the extent that such injuries result from the intentional damage or willful disregard for the facilities of the 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 the permittee to pay the compensation required within thirty (30) days after the payment due date;
- b) Failure or neglect of the permittee to comply with the material provisions of these specifications or any provision of the Omaha Municipal Code applicable to the permit and the use and occupancy of right-of-way.

(ii) Upon revocation of the permit, the permit holder shall forthwith, at the option of the City, either remove or abandon in place the cable and appurtenances for which the permit was granted. All directly buried cable, however, may be abandoned in place at the option of the permit holder. All removals and restoration of the public facilities shall be at the cost of the permittee, and the permittee shall hold the City of Omaha free from any and all encroachments or claims of any type. Such facilities which are not removed by the permission of the City of Omaha shall become the property of the City of Omaha upon the City's certification that the permittee has complied with all requirements of abandonment or cancellation with respect to the specific segment of cable involved. Whenever the permittee has failed or refused to undertake such removal, abandonment and restoration within six (6) months after such revocation of any such permit, then the City may cause such work to be done and the cost of such work shall be paid by the permittee and become a lien against the property of the permittee.

(iii) Upon a determination by the City Council that the space for which the permit is granted is needed for other public use and that no relocation within the specific right-of-way is an available, reasonable alternative, then the rights under said permit shall be transferred, to the extent possible by the co-operation of the City and the permit holder, to another specific nearby

right-of-way. Such relocation work shall be accomplished by the permit holder at its costs within the time frame specified in Section E(iii) hereof.

(iv) This Agreement shall continue in force and effect for a period of ten (10) years from the execution date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than ninety (90) days prior to the end of any period.

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

(i) When the permittee is using the public space in a capacity other than as a telecommunications company offering telecommunications service for a fee, the permittee shall pay to the City an annual rental for the use and occupancy of the space on or beneath said public street, alley, sidewalk or other public ground occupied by such use, which rental shall be the sum of One Dollar and Eighty Cents (\$1.80) per lineal foot of space occupied on or underneath the public street, alley, sidewalk or other public ground. “Telecommunications” shall be defined as the transmission, between or among points specified by the subscriber, of information of the subscriber’s choosing, without a change in the form or content of the information as sent or received.

(ii) All payments made under the provisions of this division shall be made to the City Finance Department and shall be due and payable on the first day of January of each year; provided, however, if the permit is issued for such space after the first day of January, the amount of the initial payment shall be prorated from the day when such permit is issued to the first day of January of the next year, and payment 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 rate which is the maximum legal rate of inter-

est chargeable in the State of Nebraska under such circumstances, or at any lesser rate of interest specified, if any in the permit.

SECTION H – COSTS TO BE PAID FOR PUBLIC USE PROVIDERS

(i) When the permittee is a telecommunications company offering telecommunications service for a fee and is using the public space for such purpose, the rental fee stated in section G above shall not apply, but the permittee shall pay the City the following costs: 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 paying for all inspection, relocation and facility location costs mentioned above, the permittee shall promptly pay the actual and reasonable costs of the City of all barricading, traffic detour or warning signing or flagging not actually performed by the permittee and for all other actual and reasonable direct expenses actually incurred by the City in regulating the permittee's use of public right-of-way granted in this Agreement. "Telecommunications" shall be defined as the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received.