

Broadband Franchise
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LINCOLN GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE RIGHT OF WAY IN THE CITY OF LINCOLN

WHEREAS, Allo Communications, LLC, Franchisee has applied to the City of Lincoln, Nebraska for a non-exclusive franchise to enter, occupy, and use Right of Way to construct, install, operate, maintain, and repair fiber optic cable and related facilities to offer and provide telecommunications and data services to customers in the City of Lincoln; and

WHEREAS, the 1934 Communications Act, as amended by the Telecommunications Act of 1996, recognizes and provides state and local government authority to manage the public Right of Way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis;

WHEREAS, a franchise is a general permission to a service provider to enter, use, and occupy the Right of Way for the purpose of locating facilities subject to requirements that a Franchisee must also obtain separate construction and use permits from the City for use of each and every specific location in the Right of Way in which the Franchisee intends to construct, install, operate, maintain, repair or remove identified facilities installed under this Ordinance;

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in Right of Way which must be administratively approved by the City after review of specific plans;

WHEREAS, the grant of a non-exclusive franchise requires submission to and approval by the City Council;

WHEREAS, the management of telecommunication lines are necessary to preserve and protect the health, safety and welfare of City residents and is important in providing economic benefits within the City; and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this Ordinance are in the public interest.

NOW, THEREFORE, the City Council does ordain as follows:

Section 1: Definitions.

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein wherever used. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Lincoln Municipal Code unless inconsistent herewith.

A. "Agent" shall mean any contractor, subcontractor, person or entity, other than an employee of the Franchisee, which is the under the direction, control or authorization of Franchisee to affect, install, operate and maintain Facilities owned, managed or operated by Franchisee in the Right of Way.

B. "Broadband Service" means an existing and future high speed Internet access service with a minimum speed in excess of 100 Megabits per second and provided by the Franchisee for hire, sale, or resale to the general public.

C. "City" means the City of Lincoln, Nebraska, its agencies, departments, and divisions, successors, in its present form, or in any later reorganized, consolidated or enlarged form.

D. "City Property" means and includes all real property owned by the City, other than Right of Ways, including without limitation, City parks, the City cemetery, and all property owned in fee by the City.

E. "Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines, including Optical Fiber.

F. "Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

G. "Data Caps" means any residential customer volume limitation on amount of data per month per household or per device connected to the System where exceeding the cap could subject a household to alterations to its Internet access, possibly after one or more warnings, such as reduction of access speed, additional charges, suspension of service, or even termination of service.

H. "Effective Date" means five (5) days following the publication of this Ordinance or a summary thereof occurs in an official newspaper of the City as provided by law.

I. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from accidents or natural consequences, such as storms, earthquakes, riots or wars.

J. "Existing" means in actual physical being upon the effective date of this Ordinance.

K. "Facilities" means all of the plant, electronic equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver Services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, innerducts, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances, used in connection with or incidental to the distribution and use associated with an Optical Fiber system.

L. "FCC" shall mean the Federal Communications Commission

M. "Fiber Optic Technology" means a transmission medium capable of carrying digitized bits, bytes, or packets of communications or information (such as voice, video, or data) by means of electric lightwave impulses along a glass or plastic strand or fiber.

N. "Franchisee" means Allo Communications LLC, a Nebraska limited liability company, and its lawful successors, transferees or assignees, subject to such conditions as are defined herein.

O. "Franchise Territory" means all of the area within the city limits of the City as well as any area henceforth annexed thereto during the term of the Franchise.

P. "Governmental use" means use by the City, State, or agencies or departments of the United States for the transmission of information by wire, radio, optical cable, electromagnetic, or other

similar means both internally and externally within or between their various agencies, departments, and divisions.

Q. "Incremental costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or proration of costs, of any kind whatsoever, including without limitation overhead or labor costs, which would have otherwise been incurred.

R. "Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

S. "Major Project" shall mean projects that exceed five hundred (500) feet in length, or require boring under any Right of Way, or the cutting of any pavement in any Right of Way, or the blockage of any traveling lane in any Right of Way, for any amount of time. The subdivision of a project into multiple projects individually not exceeding five hundred (500) feet in length shall not exclude them from cumulatively being included within this definition.

T. "Obstruct" shall mean to place any tangible object or material in the Right of Way in a manner that stops, hinders, disrupts, or otherwise interferes with free and open passage over a specific area or part of the Right of Way. The term does not include the otherwise legal parking of a vehicle subject to all the current parking regulations of the City.

U. "Optical Fiber" means wires, lines, and cables used to convey communications or information by means of Fiber Optic Technology.

V. "Overhead Facilities" means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

W. "Person" means a natural person, joint venture, joint stock association or company, partnership, firm, association, club, company, corporation, limited liability company, business trust, or organization.

X. "Public Street" means the surface, the area below the surface, and the airspace above the surface, of any highway, street, road, lane, alley, unpaved alleys, path, parkway, viaduct, bridge, sidewalk, or other public right of way for motor vehicle or pedestrian travel under the jurisdiction and control of the City which has been acquired, established, dedicated, or devoted to such purposes.

Y. "Right of Way" mean and include all present and future: (i) Public Streets, (ii) utility easements or similar properties in which the City now or hereafter holds a property interest and/or a maintenance responsibility which, consistent with the purposes for which it was granted or dedicated, may be used to install, operate, and maintain Optical Fiber or Facilities, now or hereafter owned by or under the jurisdiction and control of the City, but only to the extent of the City's right, title, interest, or authority to grant a license or franchise to occupy and use such Right of Way for Optical Fiber or Facilities. "Right of Way" does not include City Property; State highways; land dedicated for roads, streets, and not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the public way; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; federally granted railroad rights of way that are not open for motor vehicle use, or utility easements granted to utility companies (which may be reflected in a real property deed, subdivision plat, or other real property record) with respect to which the City holds no property interest or maintenance responsibility.

Z. "Right of Way Construction Permit" or "ROW Construction Permit" shall mean an authorization to excavate in or obstruct Right of Way at a specific place and time, to install, operate and maintain Facilities within a specified portion of Right of Way.

AA. "Services" means Broadband Service and the low-cost Internet access service described in Section 5, paragraph (B) hereof offered and delivered by Franchisee to Subscribers over the System within the Franchise Territory. The Franchisee shall provide at least 2 levels of service over its facilities. A basic Broadband Service will be equal to or great than 100 Megabits Per Second (Mbps) and a high level Broadband Service equal to or great than 1 Gigabit Per Second (Gbps); Except as provided in Section 5, paragraph (B), no service speed shall be offered slower than 100 Mbps unless agreed to in writing by the City Council.

BB. "State" means the State of Nebraska, its agencies, departments, and governmental subdivisions, and all agencies, departments, and divisions of its agencies, departments, and governmental subdivisions.

CC. "Subscriber" means any Person who entered into an agreement with Franchisee to subscribe to and is lawfully receiving Services provided by Franchisee on the Franchisee's System.

DD. "System" means Grantee's network of Optical Fiber and Facilities used to furnish and deliver Services in the Franchise Territory.

EE. "Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

FF. "Utility Poles" means poles, crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

Section 2: Franchise.

A. The City grants to Franchisee, subject to the terms and conditions of this Ordinance, a non-exclusive franchise to enter, occupy, and use Right of Way for constructing, installing, operating, maintaining, repairing, and removing the System for the purpose of providing Services within the Franchise Territory (the "Franchise"). The City also grants to Franchisee the right to use and occupy the City's conduit system pursuant to the provisions of a Conduit System Lease Agreement in the form of Exhibit A attached hereto (the "Conduit Lease"). Franchisee shall construct, install, operate, maintain, repair, and remove its facilities not covered by Exhibit A at its expense.

B. Nothing in this Ordinance grants authority to Franchisee to enter, occupy, or use of Right of Way for constructing, installing, operating, maintaining, repairing, or removing wireless communication facilities.

C. Nothing in this Ordinance grants authority to Franchisee to enter, occupy, or use City Property.

D. Any rights, privileges, and authority granted to Franchisee under this Ordinance are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Ordinance excuses Franchisee from its obligation to comply with all applicable laws enacted by the City pursuant to such

power. Any conflict between the terms or conditions of this Ordinance and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.

E. Nothing in this Ordinance excuses Franchisee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the Right of Way and to obtain permits from the City before entering, occupying, or using the Right of Way to construct, install, operate, maintain, repair, or remove such facilities.

F. Nothing in this Ordinance excuses Franchisee of its obligation to comply with all applicable codes, rules, regulations, and standards

G. Nothing in this Ordinance shall be construed to limit taxing authority or other lawful authority to impose generally applicable charges or fees, or to excuse Franchisee of any obligation to pay generally applicable lawfully imposed taxes, charges or fees.

H. Nothing in this Ordinance grants authority to Franchisee to impair or damage any City Property, Right of Way, other ways or other property, whether publicly or privately owned.

I. Nothing in this Ordinance shall be construed to give Franchisee's facilities priority of use of Right of Way over the City's facilities.

J. Nothing in this Ordinance shall be construed to create a duty upon the City to be responsible for acquisition, construction, maintenance or repair of facilities or to modify the Right of Way to accommodate Franchisee's facilities, with the exception of the obligations imposed in Exhibit A.

K. Nothing in this Ordinance grants authority to Franchisee to provide or offer cable television service or telephone services.

L. Franchisee may use its fiber optic facilities authorized by this Ordinance for the transmission of information used to provide wireless services only as expressly provided in this Ordinance or by separate express permission of the City.

M. Nothing in this Ordinance shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Ordinance.

N. Nothing in this Ordinance shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.

O. Nothing in this Ordinance authorizes Franchisee to enter or construct improvements on, in, under, over, across, or within any property or right-of-way of any third party without that party's permission.

Section 3: Term.

A. Initial Term. The authorization granted under this Ordinance shall be for a period of twenty-five (25) years from the Effective Date (the "Initial Term").

B. Renewal. If Franchisee desires to renew its franchise for an additional term, it shall, not less than one hundred eighty (180) days before expiration of the current franchise, give written notice to

the City requesting renewal. The parties shall negotiate in good faith on all issues including compensation.

Within ninety (90) days after receiving a written renewal request, the Mayor shall make a written recommendation to the City Council to grant or deny the franchise in whole or in part. After receipt of the recommendation, the City Council shall conduct a public hearing and make a decision. If the renewal request is denied, the written determination shall include the reason(s) for non-renewal. The City Council may continue consideration of the request for a period not to exceed thirty (30) days. The decision to grant or deny a renewal request shall be based upon the following standards:

1. The continuing capacity of the Right of Way to accommodate the Franchisee's existing facilities;
2. Franchisee's compliance with the requirements of the Franchise Agreement and chapter 5.12 of the Lincoln Municipal Code;
3. Applicable federal, state, and local telecommunications laws, rules, and policies; and
4. Such other factors as may demonstrate that the continued grant to use the Right of Way will serve the community interest, including indications of significant customer satisfaction or dissatisfaction with Franchisee's provision of services.; and
5. Mutual agreement on compensation issues.

C. If the parties are in agreement on compliance with standards in subsection B. 1-4 but have not reached agreement on subsection B. 5, the Franchisee shall be allowed to continue its operations under the existing terms and conditions until agreement or a decision to recommend denial is reached.

Section 4: Service Characteristics.

- A. The System shall, at a minimum, provide the following capabilities and characteristics:
1. Net Neutrality: In the provision of Broadband Service, Franchisee shall comply with the Open Internet regulations.
 2. No Blocking: Franchisee shall not block lawful content, applications, services, or non-harmful devices; and
 3. No Throttling: Franchisee shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or the use of non-harmful devices; and
 4. No Paid Prioritization: Franchisee shall not engage in paid prioritization, where paid prioritization means the management of the System to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity.

5. No Data Caps: The Franchisee shall not assign Data Caps to Broadband Services provided within the Franchise Area.

B. Service Available to Every Residence.

1. Franchisee shall use commercially reasonable best efforts to extend the System to pass every residence within the Franchise Territory within the first four (4) years of the Initial Term. Commercially reasonable best efforts would take into consideration customer demand, competitive offerings from other providers, System extension costs, weather conditions, and other potential unforeseen issues outside of Franchisee's control that adversely affect the ability to extend the System within such timeframe.
2. The Franchisee shall offer and provide Services to all residential Subscribers under non-discriminatory rates, terms, and conditions.
3. The Franchisee shall not require residential contracts for service.
4. The Franchisee shall not charge a fee for the installation of services. In the unusual circumstance where Franchisee's installation costs are exceptionally high with respect to a particular customer (currently defined as greater than \$1,500 from easement to home), Franchisee may require an installation charge. Service installations requests will be completed within a commercially reasonable time and shall not be unreasonably withheld.
5. The Franchisee shall not charge any fee for Service delivery modems.

C. Service to Government Buildings and Facilities.

1. Franchisee shall provide Metro Ethernet Service to no more than one hundred fifty (150) government-owned buildings, which are managed by the City, County or Public Building Commission, and located in the Franchise Territory with no upfront or monthly recurring charges. Such service shall be made available on a non-blocking basis up to 1 Gigabit per second (Gbps) to one hundred (100) of such buildings and up to 10 Gbps to fifty (50) of such buildings. All buildings connected to the Franchisee's System shall be upgraded to 10 Gbps before the first renewal of this franchise. Replacement electronics necessary to maintain the service will be provided by the Franchisee at no additional cost.
2. Franchisee shall provide fifteen (15) Virtual Local Area Networks (VLANs) across the entire System. Public VLAN shall be provided free of charge to the City for non-competitive use. These VLAN's shall be available at every connection and termination point on the Franchisee's network.
3. Franchisee shall provide service on a non-blocking basis up to 1 Gbps to up to five hundred (500) traffic signals in the Franchise Territory for a non-recurring charge equal to the actual incremental cost (labor and materials cost only) to extend service to each traffic signal and no monthly recurring charges. Replacement electronics necessary to maintain the service will be provided by the Franchisee at no additional cost.

4. The provision of the services described in subsections 1 and 2 above shall be subject to and contingent upon Franchisee's completion of construction of the System at such locations in accordance with its System development and extension plans, and as the City identifies the facilities to be served in such locations. Construction to all existing government buildings, facilities and traffic signals described in subsections 1 and 2 above shall be complete by the end of the fifth (5th) year of the Initial Term. New requests for government connections shall be submitted to the Franchisee by the City. Requests will be reviewed and construction completed within one hundred and twenty (120) calendar days of receipt of the new connection request.

Section 5: Public Benefits.

Franchisee agrees to promote this Ordinance through development of a Public Benefits Program, which shall consist of the following initiatives and any additional initiatives mutually agreed to by the City and Franchisee.

A. Connections for Community Organizations. Franchisee shall provide up to seventy-five (75) qualifying non-profit organizations located within the City that provide services directly to citizens ("Community Organizations") with Broadband Service at Franchisee's standard one gigabit Broadband Service offering. The service shall be provided for no recurring monthly fee and for no construction fee for a period of ten (10) years from the date of activation of the service. Participation in the program by any Community Organization shall be subject to a joint reasonable evaluation by the City and Franchisee of:

1. The proximity of the System to the Community Organization within a defined geographic area where Franchisee is offering Services;
2. The reasonable technical requirements and cost considerations;
3. The qualification and good standing as a non-profit organization under certain provisions of the Internal Revenue Code; and
4. Applicable program eligibility requirements, which shall include all of the Community Organization's other data, telecommunications, and video services, if any, are provided by Franchisee at its standard commercial rates.

Franchisee shall confer with the City to identify eligible Community Organizations and perform outreach. Following the initial ten (10) year service term, the Community Organization may continue to subscribe to some or all of the Services that Franchisee offers to similar Subscribers at then-current rates for such Services. The City understands and acknowledges that Franchisee's System design and construction plans will be based on optimal deployment of the System for residential services.

B. Low Cost and Discounted Service Tier to Low-Income Residents. Franchisee shall offer, regularly, a low cost Service tier to its residential Subscribers in accordance with this subsection. The low cost service tier shall provide a minimum of Twenty Megabits per second (20 Mbps) of speed. In addition, Franchisee shall make available a Discounted Service Tier to Low-Income Residents program based on the low cost Service tier. In order for a residential Subscriber to be eligible for the discount Service, the resident must meet all eligibility and participation requirements for the FCC's Lifeline program for discounted telephone service. The price for such discount Service tier for such qualifying low-income residential Subscribers shall reflect a discount, at the City's option, of either (a) fifteen

percent (15%) off Franchisee's regular price for that tier of Broadband Service (the "Standard Discount"), or (b) thirty percent (30%) off Franchisee's regular price for that tier of Broadband Service (the "Enhanced Discount"). Franchisee shall confer with the City to review the eligibility of existing and new Subscribers on a bi-annual basis. If the City elects to require Franchisee to apply the Enhanced Discount, then the difference between the aggregate amount of reduced Broadband Service fees received by Franchisee as a result of applying the Enhanced Discount rather than the Standard Discount shall be applied to offset the amount of franchise fees payable hereunder or any other amounts payable by Franchisee to the City. If a federal or state broadband lifeline program becomes available, then Franchisee may adopt and implement that broadband lifeline program in lieu of compliance with the provisions of this subsection B.

C. City Wi-Fi Services. Following the complete construction of fifty (50) percent of the System and the first delivery of Services to Subscribers (the "System Completion Date"), Franchisee shall use commercially reasonable efforts to construct and deploy up to three (3) wireless access networks (each, a "Wi-Fi Network") in outdoor public areas within the City (each, a "Wi-Fi Area"), with one such Wi-Fi Area to be established within eighteen (18) months of the System Completion Date, the second Wi-Fi Area to be established within thirty-six (36) months of the System Completion Date, and the third Wi-Fi Area to be established within fifty-four (54) months of the System Completion Date. Franchisee agrees to construct, operate and manage each Wi-Fi Network at its own cost and provide Wi-Fi Network access without fees during the initial term of this Ordinance. Use of and access to each Wi-Fi Network shall be subject to each user's acceptance of Franchisee's applicable Terms of Service. Franchisee shall confer with the City to identify and select optimal locations to deploy each Wi-Fi Network. The selection and deployment of each Wi-Fi Area shall be subject to (i) the design and proximity of the System to each Wi-Fi Area; (ii) reasonable technical requirements and cost considerations; and (iii) Franchisee's ability to secure rights to utilize limited private and public infrastructure, such as utility poles, or attachment points for purposes of constructing each Wi-Fi Network.

D. Franchisee agrees that the Public Benefits Program shall in no way modify or otherwise affect Franchisee's obligations to pay other fees to the City. The additional commitments in this Section are not to be offset or otherwise credited in any way against any franchise fee payments under this Ordinance, except as provided in subsection B of this Section 5 with respect to any Enhanced Discount for Broadband Service.

E. In furtherance of the goals of this Section and the Franchise in general, The Mayor shall, in coordination with Lincoln Electric System staff and Administrative Board,

1. Determine and make excess LES fiber, not currently in use by LES, available to broadband franchise holders, on terms and in quantities as are commercially reasonable and consistent with applicable laws and regulations. Such determination shall be made at the discretion and in the sole opinion of the City; and
2. Create an expedited pole attachment agreement, permit and engineering approval process which will be available to all joint use customers.

Section 6: Location of Facilities.

The System shall be erected, placed, laid, or otherwise installed, operated and maintained in such a manner as will least interfere with other public uses of Right of Way and City Property, including storm-water drainage systems, and so as not to endanger the safety of Persons.

A. Franchisee shall apply for and receive a Right of Way construction permit before Franchisee shall obstruct, excavate, cut pavement, bore, bore under or otherwise disturb the surface of any Right of Way, except in the case of emergency. After such excavation or disturbance the Franchisee shall, with due diligence and dispatch place the Right of Way in a condition in compliance with all City's standards and specifications.

B. Upon Franchisee's failure to commence, work continuously, or complete any installation, operation and maintenance or restoration work required by this Ordinance with due diligence and dispatch, the City may cause such work to be done after thirty (30) days advance written notice has been provided to Franchisee, given so as to afford Franchisee an opportunity to commence and complete such work within a reasonable time. The cost of such installation, operation and maintenance or restoration incurred by the City upon Franchisee's failure shall then be charged and collected from the Franchisee.

Section 7: Construction Permits.

A. Right of Way Construction Permits. Franchisee or Franchisee's agent shall not obstruct the Right of Way or construct new facilities or do maintenance work on more than one hundred (100) linear feet of facilities or cut the pavement or put facilities under the pavement of any defined Right of Way, without first obtaining a Right of Way construction permit.

B. Permit Requirements. To apply for a Right of Way construction permit, Franchisee or Franchisee's agent shall furnish to the City in writing or electronically the following:

1. A permit application fee of three hundred and fifty dollars (\$350.00) shall be remitted to reimburse the City for the technical review of each permit application.
2. Franchisee's name, as the owner or operator of the facility;
3. An Engineering plan of the project;
4. Dates of the construction activity, the proposed start and stop times, and any proposal to temporarily reopen any roadway for any "peak hour" period;
5. The names of any known agents, contractors or subcontractors working on the proposed project under the Franchisee's responsibility and authority;
6. The specific trees, structures, improvements, facilities, and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove, or relocate; and if Franchisee is proposing to install overhead facilities, evidence of Franchisee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole; and
7. If Franchisee is proposing to install Underground Facilities in existing ducts or conduits within the Right of Way information in sufficient detail to identify:
 - i. Evidence of ownership or authorization to use such ducts or conduits;
 - ii. Conditions of use imposed by the owner(s) of the ducts or conduits;
 - iii. If known to Franchisee or reasonably ascertainable to Franchisee, the total capacity of such ducts or conduits; and

- iv. If known to Franchisee or reasonably ascertainable to Franchisee, amount of the total capacity within such ducts or conduits which will be occupied by Franchisee's facilities;
8. If Franchisee is proposing to install Underground Facilities in new ducts or conduits within the Right of Way:
- i. The location proposed for new ducts or conduits;
 - ii. The total capacity of such ducts or conduits;
 - iii. The initial listing of collocated facilities located within Franchisee constructed or installed ducts or conduits;
 - iv. a preliminary construction schedule and completion date together with a traffic control plan in;
 - v. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities;
 - vi. Such other documentation and information regarding the facilities requested by the City;
 - vii. When requested by the City, the location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities in the Right of Way along the proposed route;
 - viii. When requested by the City, the location(s), if any, for interconnection with the telecommunication facilities of others;
 - ix. The specific trees, structures, improvements, facilities and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove or relocate;
 - x. Such other documentation and information regarding the facilities as may be reasonably requested by the City.
9. If Franchisee is proposing to install overhead facilities, evidence of Franchisee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole;
10. A traffic control plan in compliance with the following traffic control and safety standards and specifications:
- i. Whenever Franchisee is occupying any portion of Right of Way, Franchisee or Franchisee's agent shall erect a barrier around the perimeter of any excavation and provide any and all traffic-control devices, signs, and lights appropriate to the level of complexity of the activity in order to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices

shall be described within a traffic-control plan in accordance with the Federal Highway Administration Manual on Uniform Traffic Control Devices.

- ii. Franchisee shall designate a safety officer. The safety officer shall be responsible for safety-related issues affecting both the public and the Franchisee's field employees and contractors for all job sites within the Right of Way.
11. A list of the Franchisee's emergency providers, including name of company, local contact person, mailing and e-mail address, twenty-four-hour emergency phone number, and mobile phone and fax number. This information shall be kept current by written or electronic notice to the Director.
 12. For Major Projects, the following shall be required in addition to the above stated requirements:
 - i. Detailed construction plans. These plans shall show the location and area of the proposed project, the locations of all existing and proposed equipment and facilities, the height and/or depth of the proposed equipment and existing facilities, and the spatial relationship with any adjacent infrastructure, Right of Way line, easement, utility, and/or other physical features; Detailed construction plans shall be stamped by a professional engineer licensed in the State of Nebraska;
 - ii. A copy of the construction plans in an electronic format acceptable to the Director;
 - iii. At the City's request, Franchisee may meet with the Director for a pre-work conference;
 - iv. As-built construction plans will be submitted within 15 business days of completion of the project. As-built plans shall comply with the City standards for data submission and accuracy; and
 - v. Franchisee shall not be issued permits for construction or installation of new facilities unless Franchisee is in full compliance with the provisions of this Ordinance and all of Franchisee's existing facilities have been expressly approved by the City in writing.

C. Permit Terms and Conditions. Each Right of Way construction permit shall describe the general location of the permitted project, the size of the obstructed area, the duration of the permit, which shall be based on the amount of time estimated for completion of the permitted activity, and any special conditions or other information deemed relevant by the Director. A Right of Way construction permit for major projects shall be issued or denied within fifteen (15) business days of submission of a completed application. All other Right of Way construction permits shall be issued or denied within ten (10) business days of submission of a completed application. In the event of denial, the Director shall advise the applicant of all steps necessary to secure approval of the permit.

The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Franchisee to a previously approved facility; provided that neither excavation nor trenching in the public right-of-way is required, that the optical cable does not cross a distance of more than twenty feet from its point of connection to the approved facility and the point where it exits the public right-of-way, that the optical cable connection meets or exceeds all applicable technical standards required by law, that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the Right of Way, or

adversely affect public health safety or welfare, that the optical cable connection is constructed and installed to conform to all federal, state, local, and industry codes, rules, regulations, and standards, and that the optical cable connection does not damage or impair the City's urban forest.

The requirements of this section do not apply to repair or maintenance of previously approved overhead facility; provided that the location and size of the previously approved facility is not materially changed, that no additional new facilities are constructed or installed, that the repair or maintenance activities are conducted in accordance with good engineering, repair, and maintenance practices and do not interfere with the public use of the Right of Way, or adversely affect public health safety or welfare, that maintenance or repair activities conform to all federal, state, local, and industry codes, rules, regulations, and standards.

D. Emergency Permits. An emergency Right of Way construction permit is available for emergency repair projects. Any emergency excavation or repair of Franchisee's System required to maintain the safety and well-being of the general public should be commenced without delay. Notification of the emergency excavation must be provided to the Director within twenty-four (24) hours the commencement of the emergency project. This notification shall consist of the following:

1. Anticipated date, duration, start and stop time, location (site address if possible), including nearest cross street;
2. Size of the obstruction and work area less any normal traffic control in advance;
3. The name of any agent or contractor performing work on behalf of the Franchisee;
4. Franchisee's name;
5. Local contact information; and
6. General description of the type of construction activity and/or facilities installed.
 - i. Franchisee shall notify the Director upon the completion of the project. Franchisee and any agents, or contractors engaged in an activity within the Right of Way, must notify the Director that an obstruction will occur.
 - ii. Whenever the Franchisee performs any work under an emergency Right of Way construction permit, the Franchisee shall apply for a standard Right of Way construction permit as soon as possible, but in any event no later than five (5) business days following the date of notification.

E. Permit Conditions. As a condition of any Right of Way construction permit, Franchisee shall adhere to the following requirements:

1. All engineering requirements and construction standards imposed by this Ordinance;
2. All current Right of Way construction permits shall be maintained on each work site. All Right of Way construction permits shall be presented upon request to any representative of the Director; and
3. Excavation projects are subject to the requirements imposed by this Ordinance.

F. Failure to Comply. In the event Franchisee's agent fails to comply with requirements of this section, Franchisee's agent shall be precluded from obtaining any Right of Way construction permit or performing any further construction within the City's Right of Way for up to twelve (12) months from the date of notification.

G. Renewal. In the event that a permitted project is not concluded prior to expiration of the Right of Way construction permit under which it is being performed, the Franchisee shall apply to the Director for an extension of the permit. In such case, the following information shall be submitted:

1. Statement from the Franchisee indicating the reason for the delay in completion of the project;
2. Date that the Franchisee anticipates the project to be completed; and
3. A new permit fee shall be assessed for the renewal.

Section 8: Engineering Standards.

A. Allocation of Space in the Right of Way. The Director shall have the power to establish limitations on the placement of new or additional facilities within specific congested segments of the Right of Way if there is insufficient space to accommodate all of the requests of entities to occupy the Right of Way. In making such decisions, the Director shall strive, to the extent possible, to accommodate all existing and potential users of the Right of Way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the width and physical condition of the Right of Way, the protection of existing utilities and improvements in the Right of Way, and future City plans for public improvements and development projects which have been determined to be in the public's interest.

B. Location Criteria.

1. Corridors. The Director shall assign specific corridors within the Right of Way, Right of Way, easements or any particular segment thereof as may be necessary, for each type of facility that is now or as the Director concludes may in the future be located within the Right of Way. The Director shall establish an ideal cross section identifying the lateral and vertical position of each class of potential user. All permits issued by the City involving the installation or replacement of facilities shall be reviewed as to the proper corridor for the facility.
2. Variance. Any Franchisee facility which is located in the Right of Way in a position at variance with the corridors established by the Director shall move the facility at its own expense to its assigned position within the Right of Way within six (6) months of written notification from the City. This requirement may be waived by the Director for good cause shown, upon a written request giving due consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs or hardship to the Franchisee. Failure to relocate within this timeframe will constitute a breach of this Ordinance.

C. Interference. Franchisee shall not place any fixtures or equipment where the same will interfere with any existing utility or improvement. Franchisee shall locate its facilities in such a manner as not to interfere unnecessarily with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abut any Right of Way. At the request of any Person holding a valid permit to move a building, house or structure and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its Optical Fiber as necessary to permit the moving of a building, house or structure. The expense of such temporary changes may be paid by the permit holder, and Franchisee may require a reasonable deposit of the estimated payment in advance. In no event is the City responsible for any cost associated with this work.

Section 9: Construction Standards.

Franchisee must place its facilities underground except as otherwise expressly provided herein. Subject to the terms and conditions of this Ordinance, Franchisee may place Optical Fiber and splicing connections on existing utility poles as Overhead Facilities along existing cable routes if approved by the owner of the utility poles. All other facilities, including without limitation facilities required to operate or maintain such Optical Fiber and Optical Fiber housing, and splicing connections must be Underground Facilities if they are located in a Right of Way, unless otherwise expressly authorized by the City.

Franchisee's facilities shall not unreasonably interfere with the use of Right of Way or City Property by the City, the general public, or other persons authorized to enter, occupy, or use Right of Way or City Property.

After the operative date of this Ordinance, Franchisee's facilities installed or replaced in Right of Way shall be installed, maintained, upgraded or replaced in conformance to the latest City standards including, but not limited to the Technical Standards and Specification cited in the Franchisee's Conduit Lease Agreement.

Section 10: Duty to Move or Alter Facilities.

A. City reserves the right to construct or permit to be constructed cables, electric conduits, water, sewer, storm-water drainage system, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the City, along, across, over or under the Right of Way. In doing or permitting such work to be done, City, its contractors or subcontractors shall not be liable to the Franchisee for any damages to Franchisee's facilities, willful and grossly negligent acts of City, its contractors or subcontractors excepted.

B. Whenever by reason of establishing a grade or changes in the grade of any Right of Way, or in the location or manner of construction of any, cables, electric conduits, water, sewer, storm-water drainage system, gas or other pipelines, it shall be deemed necessary by the City to alter or change Franchisee's distribution system, Franchisee shall make such alterations or changes within a reasonable time, not to exceed forty-five (45) days, as ordered in writing by the City, without claim for reimbursement or compensation for damages against the City. Failure to relocate within this timeframe will constitute a breach of this Ordinance.

C. Franchisee shall relocate its facilities immediately and at its expense at the request of the City in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

D. If the City shall require Franchisee to in any way alter, relocate or change its facilities from a private easement, then Franchisee shall be reimbursed by the City for such alteration, relocation or change. Reimbursable costs shall be limited to facilities of like size.

E. The City shall have the right to require Franchisee to change the location of any of Franchisee's poles within Right of Way when, in the opinion of the City, the public convenience requires such change, and the expense thereof shall be paid by Franchisee.

F. Franchisee shall not impair or damage any City Property, Right of Way, other ways or other property, whether publicly or privately owned.

G. Whenever Franchisee's facilities are no longer used by Franchisee and Franchisee has no plans for any future use of those facilities, then Franchisee shall remove those facilities that are at or

above grade and restore the area in accordance with the City's standards. This requirement may be waived by the Director at the sole discretion of the City, upon a written request giving due consideration of such factors as the remaining economic life of the facilities, public safety, future use of Right of Way, or customer service needs to the Franchisee.

Section 11: Maintenance and Inspection of Records.

A. Franchisee shall at all times make and keep full and complete plats, maps and other records showing the location and size of the System within the corporate limits of the City of Lincoln. Such plats, maps and any other records shall show the location and nature of all other works, structures, equipment and appurtenances comprising Franchisee's system within the corporate limits of the City of Lincoln. Franchisee shall further permit the City to inspect such plats, maps, books and other records during regular business hours. After completion of construction on each project, Franchisee shall provide final as-recorded construction, (also referred to as "as built" drawings), or acquisition Facility maps, which shall be submitted to the City. Such as-recorded maps shall be based upon post-construction inspections to verify location. Copies of as-recorded maps in a digital format and accuracy acceptable to the City shall be submitted to the City.

B. Franchisee agrees to make available within the corporate limits of the City of Lincoln all books, maps, papers, and records pertaining to its business carried on by it in or through the Franchise Territory, for the purpose of affording the City the opportunity to enforce the terms of this Ordinance and particularly to collect its franchise fee and other parts of this Ordinance. Franchisee shall further permit the City to inspect and audit during regular business hours the relevant books, maps and records kept by Franchisee in the ordinary course of business. The City shall promptly notify Franchisee in writing of areas newly annexed into or deannexed from the corporate limits of the City, and Franchisee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice.

Section 12: Pole, Structures and Property Owned by Others.

Whenever feasible, Franchisee may use existing poles when the installation of facilities aboveground is permitted Franchisee must obtain written approval from the owners of all utility poles, structures and property not owned by Franchisee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the City upon request. The City makes no representation and assumes no responsibility for the availability of utility poles, structures, and property owned by third parties for the installation of Franchisee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by third parties for any reason whatsoever. The installation of System facilities by Franchisee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use Right of Way. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the Right of Way expires, terminates, or is cancelled, the authority of Franchisee to construct, install, operate, maintain, and repair Franchisee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use Right of Way for any reason whatsoever. Notwithstanding the foregoing, the erection of new poles is only to be a last resort and shall be reviewed by the City for approval on a case by case basis. In any event, new poles may not be erected in any new subdivision.

Section 13: Construction and Installation Requirements.

The technical performance of the facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The City will have the

full authority permitted by applicable law to enforce compliance with these technical standards.

A. All installations of Franchisee System will be durable and installed in accordance with good engineering, construction, and installation practices.

B. All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience public use of the Right of Way or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.

C. All reserve cable and cable loops shall be stored on properly installed opti-loop (a/k/a snow shoe) devices or similar devices or methods approved by the City.

D. The plans for facilities shall conform to and comply with all applicable federal, state, local, and industry codes, rules, regulations, and standards, including, but not limited to the National Electrical Code, the National Electrical Safety Code, and the Municipal Code of the City, in connection with the construction, operation, and repair of the System.

E. Franchisee must cease work immediately if the City determines that Franchisee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Franchisee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

F. Neither approval of plans by the City nor any action or inaction by the City shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

Section 14: Coordination of Construction and Installation Activities and Other Work.

A. Franchisee shall coordinate its construction and installation activities and other work with the City and other users of the Right of Way at least annually or as determined by the City.

B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

C. Franchisee shall make a good faith effort to comply with a private property owner or occupier's preferences, if any, on location or placement of facilities on their property, consistent with sound engineering practices.

D. Franchisee shall make available and accept the co-location of property of others within trenches excavated or used by Franchisee in the Right of Way provided the costs of the work are fairly allocated between the parties.

E. Annually, upon request of the City, Franchisee shall provide the City with a schedule of its proposed construction or installation activities, if any, and other work in, around, or that may affect the Right of Way or City property.

F. The City shall give reasonable advance notice to Franchisee of plans to open Right of Way for construction or installation of Underground Facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall

provide information requested by the City regarding Franchisee's future plans for use of the Right of Way to be opened. When notice has been given, Franchisee may only construct or install underground facilities during such period that the City has opened the Right of Way for construction or installation.

G. In the event of an unexpected repair or emergency, Franchisee may commence such repair and emergency response work as required under the circumstances, provided Franchisee shall notify the City as promptly as possible: before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

Section 15: Temporary Removal, Adjustment or Alteration of Facilities.

A. Franchisee shall temporarily remove, adjust or alter the position of its facilities at its cost at the request of the City for public projects or other public operations or purposes.

1. The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;
2. Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Franchisee, in the sole discretion of the City;
3. The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents, servants or employees of the person moving or removing such building or other object; and
4. Completion of notification requirements by a person who has obtained permission from the City to use a Right of Way for the moving or removal of any building or other object shall be deemed to be notification by the City.
5. The City may temporarily remove, adjust or alter the position of Franchisee's facilities as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to Franchisee or any other party for any direct, indirect, or other damages suffered as a direct or indirect result of the City's actions.
6. The temporary removal, adjustment or alteration of the position of Franchisee's facilities shall not be considered relocation for any purpose whatsoever.

Section 16: Safety and Maintenance Requirements.

A. All work authorized and required under this Ordinance will be performed in a safe, thorough, and workmanlike manner.

B. Franchisee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made at the cost of Franchisee.

C. Franchisee, and any person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in Right of Way to prevent injury or damage to any person, vehicle, or property.

D. Franchisee shall maintain the System in proper working order. Franchisee shall restore the System to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Franchisee, establish a reasonable time for Franchisee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order or have them restored at the cost of Franchisee. In general, a reasonable period of time is established as not to exceed four (4) hours.

Section 17: Removal of Unauthorized Facilities.

Within ninety (90) days following written notice from the City for any reason listed in this Ordinance, Franchisee shall, at its expense, remove unauthorized facilities and restore Right of Way and other property to as good a condition as existed prior to construction or installation of the System. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

A. Upon expiration, termination, or cancellation of the Franchise granted under this Ordinance;

B. Upon Franchisee's abandonment of the System. The System shall be deemed abandoned if the entire System is unused by Franchisee for a continuous period of at least one hundred eighty (180) days

C. If the facilities were constructed or installed prior to the effective date of this Ordinance; unless such facilities have been expressly approved by the City in writing following inspection after Franchisee has provided full information requested by the City regarding the facilities;

D. If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;

E. If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Ordinance; or

F. If the facilities are unauthorized for any reason whatsoever.

Provided, however, that the City may, in its sole discretion, allow a Franchisee to abandon facilities in place. No facilities may be abandoned in place without the express written consent of the City. Upon consensual abandonment in place of facilities, the facilities shall become property of the City, and Franchisee shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such facilities. The failure of Franchisee to submit an instrument shall not prevent, delay, or impair transfer of ownership to the City.

Section 18: Indemnification and Assumption of Risk.

A. Indemnification. To the fullest extent permitted by law, Franchisee shall indemnify and hold harmless City, its elected officials, officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from Franchisee's performance under this Ordinance that results in any third-party claim for damages whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by Franchisee or anyone directly or indirectly employed by Franchisee or anyone for whose acts any of them may be liable. This section will not require Franchisee to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the City. The City does not waive its governmental immunity by granting this Ordinance and fully retains all immunities and defenses provided by law with regard to any action based on this Ordinance. The provisions of this section survive any termination of the Franchise granted hereunder.

B. Assumption of risk. Franchisee assumes the risk of damage to its facilities located in Right of Way from activities conducted by third parties or the City, its elected officials, officers, employees, servants, agents, or representatives. Franchisee releases and waives any and all claims against the City, its elected officials, officers, employees, servants, agents, and representatives for damage to or destruction of Franchisee's facilities except to the extent any such damage or destruction is caused by or arises from active sole negligence of the City.

C. Franchisee bears sole responsibility to insure its property. Franchisee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, servants, agents, and representatives, and Franchisee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives against any and all subrogation claims if it fails to do so.

Section 19: Insurance.

Franchisee shall obtain and maintain, at its cost, worker's compensation insurance and the following liability insurance policies insuring both the Franchisee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Franchisee:

- A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
1. \$2,000,000.00 for bodily injury or death to each person;

2. \$1,000,000.00 for property damage resulting from any one accident; and
3. \$1,000,000.00 for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 for each person and \$1,000,000.00 for each accident;

C. The liability insurance policies required by this section shall be maintained by Franchisee throughout the term of the Franchise, such other periods of time during which Franchisee's facilities occupy Right of Way, and while Franchisee is engaged in the removal of its facilities. Franchisee shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any construction or installation of any facilities pursuant to this Ordinance or other work in a Right of Way. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 20: Security Fund.

Franchisee shall establish and maintain a security fund in the amount of fifty thousand dollars (\$50,000), at its cost, with the City by depositing such monies, bonds, letters of credit, or other instruments in such form and amount acceptable to the City. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a Right of Way.

A. The fund shall serve as security for the full and complete performance of this Ordinance, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Franchisee to comply with the provisions of this Ordinance or the codes, ordinances, rules, regulations, standards, or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:

1. Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;
2. Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;
3. Providing a reasonable opportunity for Franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

4. Franchisee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

C. Franchisee shall replenish the security fund within fourteen (14) calendar days after written notice from the City that there is a deficiency in the amount thereof.

D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility.

Section 21: Taxes, Charges, and Fees.

A. Franchisee shall pay and be responsible for all generally applicable charges and fees imposed by the City on a competitively neutral basis, including those to recover actual administrative expenses incurred by the City that are directly related to management of Right of Way, including receiving and approving this franchise, any permits, inspection of plans and construction.

B. Franchisee shall pay and be responsible for taxes and franchise fees permitted by law.

C. In addition to penalties and other remedies for which Franchisee may be subjected, if Franchisee obtains a cable television franchise, Franchisee shall pay and be responsible for franchise fees for providing or offering cable television service in accordance with Chapter 5.15 of the Lincoln Municipal Code.

D. In addition to penalties and other remedies for which Franchisee may be subjected, the City reserves the right to impose site-specific charges for placement of structures used to provide wireless services.

E. No more than once every three (3) years the City shall have the right to conduct audits of Franchisee's records related to the franchise fee payments made pursuant to this Agreement or lease payments under the Conduit Lease. No audit may go back more than five (5) years. In the event the amount owed as a result of the findings of such audit is in excess of two percent (2%) of the aggregate amount of franchise fees and conduit lease fees paid by Franchisee during the audited period, Franchisee shall pay the City's expenses associated with such audit.

Section 22: Additional Ducts and Conduits.

When Franchisee undertakes new construction of its facilities under main arterial Public Streets, Franchisee shall construct and install additional ducts and conduits when and where requested by the City where feasible within such new construction and related structures necessary to access the ducts and conduits. Such ducts and conduits shall be readily accessible and available for governmental use as determined by the City in its sole discretion. Such ducts and conduits shall not be used by the City to provide Internet access, telecommunications or cable television service for hire, sale, or resale to the general public unless otherwise agreed by the Franchisee. The City shall not be charged or responsible for any more than the incremental costs to construct and install such ducts and conduits, and the City shall not be charged or responsible for any use. Nothing stated in the section above shall be construed to limit the City's use of the conduit to provide Internet access, telecommunications or cable television services to government agencies.

Section 23: Access to Facilities and Universal Service.

Franchisee shall provide access to its services by hire, sale, or resale without unreasonable discrimination. The Franchisee purports to serve the general public, it shall make its telecommunications and broadband services available to any customer within the Franchise Territory who shall request such service whenever feasible, without unreasonable discrimination as to the terms, conditions, rates or charges for the Franchisee's services. It is understood that Franchisee shall be entitled to exercise normal business judgment in allocating or reserving limited capacity.

Section 24: Annexation.

Upon any addition or annexation to the City of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Ordinance without further action of the City or Franchisee.

Section 25: One-Call System.

Franchisee is responsible for complying with the provisions of Nebraska's One-Call statutes and all City codes associated with the location of the System.

Section 26: Vacation of Right of Way.

The City reserves the right to vacate any Right of Way which is subject to rights, privileges, and authority granted by this Ordinance. If Franchisee has facilities in such Right of Way the City shall reserve a right of use for Franchisee.

Section 27: Duty to Provide Information.

Within twenty (20) days of a written request from the City stating the cause for such request, Franchisee shall furnish the City with all requested information sufficient to demonstrate:

A. That Franchisee has complied with the requirements of this Ordinance specified in such request; and

B. That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid.

C. Franchisee's obligations under this section are in addition to those provided elsewhere in this Ordinance.

D. The Franchisee shall provide the City quarterly reports on customer complaints. For the purposes of this requirement customer complaints are defined as:

1. Complaints received by the Franchisee and their resolution;
2. Such complaints may be made by letter, email, phone call or any other medium by which Franchisee may be contacted; and
3. The City may allow the Franchisee to make a summary version of this requirement.
4. These reports shall be confidential unless deemed necessary by the City for the enforcement of Section 30.

Section 28: Records.¹

Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are directly related to the enforcement of this Ordinance or to verify Franchisee's compliance with terms or conditions hereof. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party.

All such documents and records maintained by Franchisee shall be made available for inspection by the City at reasonable times during normal business hours within fourteen (14) days of a written request by the City; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

One copy of documents and records requested by the City will be furnished to the City at the cost of Franchisee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Franchisee may request, in writing within ten (10) days of the City's request, that the City inspect them at Franchisee's local office. If any documents or records of Franchisee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Ordinance, or to verify Franchisee's compliance with terms or conditions of this Ordinance, then all reasonable travel and related costs incurred in making such examination shall be paid by Franchisee.

Section 29: Assignment or Transfer.

Franchisee's rights, privileges, and authority under this Ordinance may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In the case of a merger, consolidation, sale of all or substantially all of Franchisee's assets or other business combination, the City shall not withhold or delay its approval as long as Franchisee complies with the requirements in this Section 29. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Ordinance may be subject to the following reasonable conditions:

A. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

B. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and eighty (180) days prior to the proposed date of assignment, transfer, or disposal:

1. Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;
2. Any other information reasonably required by the City directly related to the standards set forth in subsection 24(C) below; and

¹ Note: To be coordinated with other existing recordkeeping and record access provisions of this Ordinance.

3. A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal, not to exceed (i) twenty-five thousand dollars (\$25,000).

C. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Ordinance and to comply with the terms and conditions of this Ordinance.

D. Any transfer, assignment, or disposal of rights, privileges, and authority under this Ordinance without prior written approval of the City pursuant to this section shall be void and is cause for termination of the Franchise.

E. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the Franchisee, of the ownership or working control of affiliated entities having ownership or working control of Franchisee, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval. A Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of a Franchisee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes.

F. It is understood that Franchisee intends to sell, lease or license capacity on its network to third-party Internet service providers or other entities that will provide service to end users. Accordingly, the sale, lease or license of Franchisee's network capacity, not involving transfer of ownership or working control of facilities constructed or installed pursuant to this Ordinance, shall not be deemed a transfer, assignment or disposal subject to section 24.

G. All terms and conditions of this Ordinance shall be binding upon all successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Ordinance.

H. Notwithstanding anything to the contrary in this Ordinance, the rights, privileges, and authority under this Ordinance may be assigned or transferred to any Person who at the time of the assignment or transfer controls, is controlled by, or is under common control with, Franchisee. In the event Franchisee intends to sell the facilities or system constructed or installed under this franchise, the City shall have an equal opportunity to purchase such facilities or system as other potential buyers. City shall be given the same notice and opportunities to purchase as other potential buyers.

Section 30: Violations, Noncompliance, and Other Grounds for Termination or Cancellation.

A. The Franchise granted hereunder, and any right, privilege or authority of Franchisee to enter, occupy or use Right of Way may be revoked by the City for the following reasons:

1. Violation of or noncompliance with any material term or condition of this Ordinance by Franchisee;
2. Violation of or noncompliance with the material terms of any required permit by Franchisee;

3. Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any Right of Way without Franchisee first obtaining required permits from the City and all other appropriate regulatory authorities;
4. Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;
5. Misrepresentation by or on behalf of a Franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;
6. Abandonment of facilities;
7. Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or
8. Insolvency or bankruptcy of Franchisee.

B. In the event that the City believes that grounds exist for termination or cancellation of the Franchise granted under this Ordinance or any right, privilege or authority of Franchisee to enter, occupy or use Right of Way, Franchisee shall be given written notice thereof by the City, together with a reasonably detailed description of the grounds for such possible revocation, and providing Franchisee a reasonable period of time not exceeding thirty (30) days to furnish evidence:

1. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for revocation;
2. That rebuts the alleged violation, noncompliance, or other grounds for revocation; or
3. That it would be in the public interest to impose some penalty or sanction less than revocation.

C. In the event that Franchisee fails to provide evidence reasonably satisfactory to the City as provided in subsection (B) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for revocation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

D. If the City Council determines that the violation, noncompliance, or other grounds for revocation arose from willful misconduct or gross negligence by Franchisee, then, Franchisee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Ordinance or any use and/or development authorization or permit granted by the City, and this Ordinance and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Franchisee's actions or omissions.

E. The City Council's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Ordinance or the material terms of any use and/or development authorization

or required permit by Franchisee. Franchisee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for revocation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Ordinance and any use and/or development authorization or permit granted to Franchisee.

F. In addition to any other remedies the City may have, violation of any provision of this Ordinance shall be deemed to be a violation of chapter 5.12 of the Lincoln Municipal Code and subject to the penalty provisions prescribed by Lincoln Municipal Code. Franchisee shall ensure that its contractors, agents, and assigns have knowledge of the provisions of this Ordinance, and violations of the provisions of this Ordinance by Franchisee's contractors, agents, or assigns shall be deemed to be violations by Franchisee.

Section 31: Notices.

A. Any regular notice or information required or permitted to be given to the parties under this Ordinance may be sent to the following addresses unless otherwise specified:

The City:
City of Lincoln
Attn: City Clerk
575 S. 10th St.
Lincoln, NE 68502
Phone: (402) 441-7438

Franchisee:
Allo Communications LLC
Attn: President
121 South 13th Street
Suite 201
Lincoln, NE 68508

B. Franchisee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Franchisee shall cooperate with the City and make best efforts to immediately respond to minimize damage, protect the health safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Franchisee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

Section 32: Non-waiver.

The failure of the City to exercise any rights or remedies under this Ordinance or to insist upon compliance with any terms or conditions of this Ordinance shall not be a waiver of any such rights, remedies, terms or conditions of this Ordinance by the City and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Section 33: Eminent Domain.

This Ordinance is subject to the power of eminent domain. In any proceeding under eminent domain, the franchise itself shall have no value.

Section 34: Limitation of Liability.

Except for willful misconduct, administration of this Ordinance may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, servant, agents, and representatives for any injury or damage from the failure of the Franchisee to comply with the provisions of this Franchise; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Ordinance by the City; or for the accuracy of plans submitted to the City.

Section 35: Damage to Facilities.

Unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a Right of Way done by or on behalf of the City.

Section 36: Governing Law and Venue.

This Ordinance and use of the applicable Right of Way will be governed by the laws of the State of Nebraska, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Nebraska, unless preempted by federal law, and subjected to the jurisdiction of the Courts of the State of Nebraska. Any action relating to this Ordinance must be brought in the District Court of Lancaster County, or in the case of a federal action, the United States District Court in Lincoln, Nebraska, unless an administrative agency has primary jurisdiction.

Section 37: Severability.

If any section, sentence, clause, or phrase of this Ordinance or its application to any Person should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance nor its application to any other Person.

Section 38: Compliance with Federal, State and Local Laws.

A. This Ordinance shall at all times be subject to applicable local, state and federal law, except as specifically provided otherwise.

B. If any federal or state law or regulation shall require or permit the City or Franchisee to perform any service or act or shall prohibit the City or Franchisee from performing any service or act which may be in conflict with the terms of this Ordinance, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Franchisee and the City shall, to the extent terms in this Franchise are clearly preempted, conform to state laws and regulations regarding Internet access services as they become effective, unless otherwise stated, and to conform to federal laws and regulations as they become effective.

C. In the event that federal or state laws or regulations clearly preempt a provision or limit the enforceability of a provision of this Ordinance, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or state law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

D. If any term, condition or provision of this Ordinance or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Ordinance and all terms, provisions and conditions hereof shall, in all other respects, continue to be effective. In the event such law or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Franchisee and the City without further action by the City.

Section 39: Miscellaneous.

A. Equal Employment and Nondiscrimination. Throughout the term of the franchise granted under this Ordinance, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, any applicable FCC rules and regulations relating thereto.

B. Descriptive Headings. The headings and titles of the sections and subsections of this Ordinance are for reference purposes only and do not affect the meaning or interpretation of the text herein.

C. Costs and Attorneys' Fees. If any action or suit arises in connection with this Ordinance, the prevailing party will be entitled to recover all of its reasonable costs, including attorneys' fees, in addition to such other relief as the court may deem proper.

D. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the City and Franchisee, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

E. Mutual Negotiation. This Ordinance was mutually negotiated by the Franchisee and the City and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Ordinance.

F. Third-Party Beneficiaries. There are no third-party beneficiaries to this Ordinance.

G. Actions of the City or Franchisee. In performing their respective obligations under this Ordinance, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Ordinance sets forth a time for any material act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Ordinance, and sufficient grounds for the City to invoke any relevant remedy.

H. Entire Agreement. This Ordinance represents the entire understanding and agreement between the City and Franchisee with respect to the subject matter and supersedes all prior oral and written negotiations between them.

I. Modification. The City and Franchisee may alter, amend or modify the terms and conditions of this Ordinance upon written agreement of both parties to such alteration, amendment or

modification. Nothing in this subsection shall impair the City's exercise of authority reserved to it under this Ordinance.

J. Non-exclusivity. This Ordinance does not confer any exclusive right, privilege, or authority to enter, occupy or use Right of Way for delivery of telecommunications services or any other purposes. The Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any Right of Way.

K. Rights granted. This Ordinance does not convey any right, title or interest in Right of Way, but shall be deemed only as authorization to enter, occupy, or use Right of Way for the limited purposes and term stated in this Ordinance. Further, this Ordinance shall not be construed as any warranty of title.

L. Contractors and subcontractors. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee.

M. Force Majeure. Neither party shall be liable for failure to perform the party's obligations if such failure is a result of unforeseeable Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, or lockout. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of the unforeseen event.

N. Lincoln Municipal Code chapter 5.12. To the extent that express provisions of this Ordinance conflict with chapter 5.12 of the Lincoln Municipal Code, the provisions of this Ordinance will control.

O. No broadband franchise granted to any other Person or entity shall be on terms or conditions more favorable or less burdensome when taken as a whole than those imposed herein.

Section 40: Acceptance of Franchise.

Within thirty (30) days after the passage and approval of this Ordinance, the Franchise granted under this Ordinance may be accepted by the Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept the Franchise granted hereunder within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights, privileges, and authority herein granted shall, after the expiration of the 30 day period, absolutely cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 41: Amendment.

Following acceptance of the terms hereof by Franchisee, the terms and conditions of the Franchise granted under this Ordinance may not be amended, supplemented or repealed without the written consent of both the City and Franchisee.