

**LICENSE FOR USE OF PUBLIC RIGHT-OF-WAY
(INITIAL ISSUANCE - UTILITY SYSTEM)**

This License for Use of Public Right-of-Way issued by the City of Des Moines, Iowa, a municipal corporation organized and existing under the laws of the State of Iowa, hereafter referred to as "Licensor" or "City", to _____
(hereinafter referred to as " _____ " or as the "Licensee")
a _____ (type of business entity) organized and existing under the law of the State of _____.

PREAMBLE

WITNESSETH:

WHEREAS, _____ has made application to the City of Des Moines for the issuance of a license giving it permission to use City street rights-of-way for the purpose of constructing, installing, operating, and maintaining a _____ system, more completely described in Exhibit A hereto and hereafter referred to as "the utility system" or "the system"; and

WHEREAS, the City Council of the City of Des Moines has enacted an ordinance, commonly known as the Right-of-Way Management Ordinance, providing for an enhanced level of management and regulation of private or commercial uses of City rights-of-way, and providing for the franchising, licensing, or leasing of such uses of City rights-of-way, which ordinance is now codified at Chapter 102, Article IX of the Municipal Code of the City of Des Moines, Iowa ("the City Code"); and

WHEREAS, _____, as Licensee, has filed an application for the issuance of such license with the City Engineer, therein proposing that it be allowed to use those specified portions of City rights-of-way hereafter identified in Exhibit A hereto for the purpose or purposes therein identified.

NOW, THEREFORE, for and in consideration of the Licensee's payment of a \$500.00 application fee to cover the costs of processing its license application; the Licensee's commitment to obtain right-of-way permits and pay right-of-way permit fees as hereafter provided; and the Licensee's commitment to comply with the provisions of Chapter 102, Article IX of the City Code, and, if applicable, Chapter 110, Article III of the City Code, as presently enacted or as hereafter amended by the City Council; and in further consideration of the mutual covenants and undertakings hereinafter made by the City and the Licensee, the parties do agree as follows:

1. License for Use of Specified Portions of City Rights-of-Way for Specified Purpose. Pursuant to Chapter 102, Article IX of the City Code, the City hereby issues this License for Use of Public Right-of-Way (hereafter "License") to the Licensee, extending to it the privilege of using and

occupying those City street rights-of-way hereafter specifically identified in Exhibit A hereto, for the construction, installation, operation and maintenance of a utility system as described in said Exhibit A, for the purpose or purposes identified in said Exhibit A, which utility system or systems shall be limited to that equipment identified and described in said Exhibit A.

2. License Contingent Upon Continuing Compliance with License and City Code Requirements. This License is issued subject to the provisions of Chapter 102, Article IX of the City Code and, if applicable, Chapter 110, Article III of the City Code. By its acceptance of this License, Licensee agrees that this License and its privilege to use and occupy City right-of-way is contingent upon its continued compliance with, and its continued performance as required by, the terms and conditions of this License and the above referenced provisions of the City Code. By its acceptance of this License, Licensee further agrees that the City may revoke, cancel, or refuse to renew this License for failure to comply with, or for failure to perform as required by, this License or the said provisions of the City Code, pursuant to procedures provided-for in applicable law.

3. Temporary Nature of License. This License shall be for an initial term of five (5) years and shall continue in effect until **the ____ day of _____, 20____**, at which time this License shall terminate and expire unless it has been renewed as provided in Chapter 102, Article IX of the City Code. By acceptance of this License, Licensee acknowledges that the initial issuance and any renewal of this License is in the discretion of the City Engineer. Licensee agrees that in exercising that discretion, the City Engineer may apply the issuance and renewal criteria and standards set forth in Chapter 102, Article IX of the City Code. The termination or expiration of this License notwithstanding, the Licensee shall retain its liabilities and obligations with respect to the maintenance and removal of its equipment from City right-of-way, and with respect to the restoration of City rights-of-way upon such removal of its equipment, as provided by the City's Utility Accommodation and Street Restoration Specifications, as they presently exist or may hereafter be amended, and as provided in Chapter 102, Article IX of the City Code as well as the technical standards, as they presently exist or may hereafter be amended, and as provided in Chapter 110, Article III of the City Code.

4. License Effective. This License shall be effective upon the occurrence of all of the following:

- (a) acceptance and execution of this License by the Licensee, and
- (b) approval and execution of this License by the City Engineer.

5. Licensee to Obtain Right-of-Way Permits and Pay Right-of-Way Permit Fees. By its acceptance of this License, Licensee agrees that, prior to excavating in City right-of-way in conjunction with its construction, installation, operation, or maintenance of its equipment in City right-of-way pursuant to this License, it shall obtain an excavation permit from the City's Permit and Development Center and pay an excavation permit fee, all as required by Chapter 102, Article IX of the City Code. Licensee further agrees that, prior to obstructing City right-of-way in conjunction

with its construction, installation, operation, or maintenance of its equipment in City right-of-way pursuant to this License, it shall obtain an obstruction permit from the City's Permit and Development Center and pay an obstruction permit fee, all as required by Chapter 102, Article IX of the City Code. Licensee further agrees to pay right-of-way permit fees for such activities as determined by reference to the right-of-way permit fee schedule hereafter adopted by the City Council pursuant to Chapter 102, Article IX of the City Code. Licensee further agrees to cause its contractors to obtain excavation or obstruction permits and pay permit fees before excavating in or obstructing City right-of-way in conjunction with the construction, installation, operation, or maintenance of its equipment in City right-of-way pursuant to this License.

6. Location of Equipment in City Rights-of-Way; Provision of Mapping Data.

(a) Licensee has provided to the City's Permit and Development Center, in connection with its application for this License, a set of plans and specifications showing the equipment it intends to construct or emplace in City rights-of-way, and the proposed location of such equipment with respect to right-of-way lines or other monuments. By its acceptance of this License, Licensee acknowledges and agrees that the City shall have authority to determine the required location of such equipment in its right-of-way, and that Licensee is required to construct its equipment at the location directed by the City Engineer as shown on the plans and specifications approved by the City Engineer. If the City Engineer does not approve the location for equipment as proposed by the Licensee, the Licensee shall cause its plans and specifications to be revised accordingly and resubmitted to the City's Permit and Development Center.

(b) By its acceptance of this License, Licensee agrees to construct its equipment as shown, and in the locations shown, on the plans and specifications approved by the City Engineer, and shall upon completion of construction thereof certify to the City that said equipment has been constructed and located within City rights-of-way as shown on the approved plans and specifications.

(c) Licensee acknowledges that the City is revising its Utility Accommodation and Street Restoration Specifications regarding the placement of utility facilities in City rights-of-way. Licensee further acknowledges that the City's revision of said Specifications may impact how such cables and related equipment and facilities are installed, both above and below ground. Licensee agrees that upon the City Council's approval of revised Utility Accommodation and Street Restoration Specifications, the City may require it to modify the manner of installation of its equipment and related facilities to comply with said revised Specifications, and Licensee agrees to promptly make such modifications at its sole cost and expense upon request by the City. In the event of relocation, Licensee shall comply with said revised Specifications.

(d) Licensee further acknowledges that Chapter 102, Article IX of the City Code will require it to provide mapping data for all equipment which it places in City rights-of-way in the format and detail required by the City's Utility Accommodation and Street Restoration Specifications. In addition, if applicable, Licensee shall abide by the technical standards, as they presently exist or may hereafter be amended, provided in Chapter 110, Article III of the City Code. Licensee further acknowledges that the City is revising its Utility Accommodation and Street Restoration Specifications to include mapping specifications. Licensee agrees that upon the City Council's approval of revised Utility Accommodation and Street Restoration Specifications including mapping

specifications, it will provide mapping data in accordance with said mapping specifications for those portions of its system installed pursuant to this License on compact disk in MicroStation format, or on compact disk in an alternate format which is convertible to MicroStation format if Licensee cannot comply with the revised mapping specifications without acquiring new hardware or software.

7. Construction of Utility Equipment by Licensee or Contractor; Extension of Utility System; Restoration of the Right-of-Way.

(a) Licensee shall be subject to all the permitting requirements of the City Code, including but not limited to Licensee obtaining a permit for all construction, installation, relocation, or removal of the utility system.

(b) In undertaking the repair, maintenance or extension of its utility system, Licensee shall obtain right-of-way permits and pay right-of-way permit fees as required by Chapter 102, Article IX of the City Code. If the work will be performed in whole or in part by a contractor, the Licensee shall cause its contractor to obtain right-of-way permits and pay right-of-way permit fees. The City reserves the right to reject any contractor for purposes of performing right-of-way restoration work if in the judgment of the City Engineer the contractor does not possess the requisite skill, resources, or experience to perform such restoration work.

(c) If the Licensee should at anytime determine the need to extend its utility system to other City rights-of-way not licensed for such use, Licensee shall make application to the City Engineer to amend its License by addendum, allowing such use of additional City right-of-way, and shall pay a fee in connection with such application for amendment. Licensee shall be required to prepare an addition to Exhibit A and to its Route Map describing such addition to its system, and shall be required to submit detailed plans and specifications showing the proposed location of its equipment within the right-of-way. Licensee shall be required to pay a plan review fee in connection with its submission of such plans and specifications. In addition, Licensee shall be subject to all the permitting requirements of the City Code. The City Engineer may in his/her discretion approve such extension by execution of the Addendum submitted by the Licensee.

(d) Licensee shall provide or procure an appropriately skilled and equipped workforce, and shall provide necessary supervision, to construct the system in a workmanlike manner. Licensee shall provide contact numbers for construction supervisors to the City's Permit and Development Center.

(e) Licensee shall upon completion of construction or installation of each segment of its system promptly restore or promptly cause the restoration of the City's right-of-way for safe and efficient vehicular and pedestrian use. Right-of-way restoration work shall be performed as required in the City's Utility Accommodation and Street Restoration Specifications.

(f) Licensee shall be solely responsible for all costs associated with the construction and installation of its system and restoration of the City's right-of-way, including the City's expenses and overhead attributable to review, processing, inspection, enforcement, escort or other activities in connection with this License. Costs shall include those City expenses directly attributable to the work performed in connection with the construction and installation of the system, including the cost of labor and supervision.

(g) In the event the City Engineer determines that the Licensee or its contractor does not

possess the requisite skill, resources, or experience to perform right-of-way restoration work, or in the event the City Engineer determines that any right-of-way restoration work performed by the Licensee or its contractor is unacceptable, the City Engineer may direct that such restoration work be performed or redone, as the case may be, by a City work crew or contractor, and the costs of such restoration work shall thereafter be paid by the Licensee's surety or its contractor's surety if a bond has been provided and is still in force, as provided in Section 102-717 of the City Code, or shall thereafter be paid by the Licensee in the absence of such bond or in the event the surety declines to make payment.

8. Compliance with Reporting Requirements. By its acceptance of this License, Licensee agrees to submit an annual report of right-of-way usage, as provided and required by Chapter 102, Article IX of the City Code.

9. Operation and Maintenance of Utility Equipment During the term of this License, including any renewals thereof, Licensee shall, at its own expense, maintain the system in a safe condition and in a manner so as not to physically conflict or electronically interfere with the facilities of the City or the City's franchisees or licensees, and so as not to conflict or interfere with pedestrian or vehicular use of City rights-of-way. Any work required to maintain the system shall be performed as required in the City's Utility Accommodation and Street Restoration Specifications.

10. Indemnity and Insurance. By its acceptance of this License, Licensee agrees (a) to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City, as more particularly provided in Exhibit B attached hereto, and (b) to obtain and maintain in continuous effect during the term of this License, and while its utility system equipment is located in City right-of-way, the insurance coverages set forth in Exhibit B attached hereto. Licensee further agrees to comply with insurance and indemnity requirements hereafter imposed by the City pursuant to the provisions of Chapter 102, Article IX of the City Code.

11. Licensee's Use Subservient to City Use; Removal or Relocation of Utility Equipment Required to Accommodate City Use.

(a) By its acceptance of this License, Licensee agrees that its system, and its use and occupancy of City right-of-way for the purpose herein provided, shall be subservient to the City's use of the right-of-way and to the City's need to optimize use of the right-of-way by competing uses. If at any time during the initial term of this License or any renewal thereof the City determines the need to use all or any portion of the City's rights-of-way wherein the Licensee's system is located for any public use or purpose, or determines the need to manage the use of the right-of-way to optimize such use by competing uses, it may terminate this License as to the right-of-way so required, and/or it may require the Licensee to relocate its system within, or remove its system from, the right-of-way, or the City may require the Licensee to relocate or remove so much of its equipment as is required to accommodate the City's use of the right-of-way or the City's need to optimize use of the right-of-way by competing uses.

(b) By its acceptance of this License, Licensee agrees that such relocation or removal of its system or its equipment as set forth in City Code shall be undertaken and completed by it as its sole cost and expense. By its acceptance of this License, Licensee further agrees that it has not by virtue of the City's issuance of this License acquired any property interest in City right-of-way, and that it shall not be entitled to compensation from the City on account of the City's termination of its License as above provided, or on account of the City's direction to remove or relocate the Licensee's system or any part thereof. In the event Licensee determines that it is not feasible to relocate the system or the affected portion thereof, Licensee may terminate this License upon giving at least thirty (30) days written notice to City.

(c) Except as to City projects, nothing in this License is intended to abrogate or waive any right to reimbursement that Licensee may have under applicable law or the terms of a public project funding grant.

12. Termination of License; Removal of Equipment; City May Acquire Ownership of Abandoned Equipment.

(a) Termination for Cause. If, through any cause, Licensee shall fail to fulfill its obligations under this License, or, if it shall violate any of the covenants, terms or conditions herein, and if such failure or violations should continue for a period of thirty (30) days after written notice thereof is given by the City to Licensee, the City shall thereupon have the right to terminate this License by sending written notice to Licensee of such termination and specifying the effective date thereof, unless a written extension is granted by the City in the City's sole discretion.

(b) Termination at Will. The City, pursuant solely to the City's rights to manage and administer the right of way, or Licensee shall have the right to terminate this License at any time by giving written notice to the other party at least sixty (60) days prior to the termination date. Thereafter, the parties shall have no further obligation to the other under this License except as otherwise specified herein. After such termination, Licensee shall have 60 days to remove its system from the City's rights-of-way and to commence restoration thereof, unless a written extension is granted by the City in the City's sole discretion. If Licensee fails to remove its system as provided herein, it shall be deemed abandoned as provided in Chapter 102, Article IX of the City Code. Upon abandonment of its system or any portion thereof by Licensee, the City may remove part or all of the system at Licensee's cost, or the City may assume possession and ownership of the system or so much thereof as the City deems desirable, without any payment to the Licensee.

(c) It is expressly recognized by Licensee that notwithstanding its expense for improvements and alterations to City right-of-way or land, the City shall have the express right to terminate this License, be it for cause or at will, without compensating Licensee in any manner, including, but not limited to, replacement value or fair market value of any improvement placed on City right-of-way, and including losses or damages that may be suffered by Licensee.

13. Transfer of License, Business, or Equipment.

By its acceptance of this License, Licensee agrees that it will not transfer this License, its business, or its utility system equipment in City right-of-way to another person, or change the use of its equipment in City right-of-way, without giving the City prior written notice thereof, and said transfer shall be limited in scope as follows: (i) the transfer

is made to Licensee's affiliated company, or (ii) the transfer is carried out as part of a merger or consolidation. The transferee shall be limited to using the utility system for the same purpose as set forth in this License and shall be required to meet all licensing and permitting requirements under this License and the City Code. The City will then update all documentation to reflect the transferee's ownership.

14. Terms Defined. All terms used in this License shall have the meanings ascribed to them as those terms are defined in Chapter 102, Article IX and, if applicable, Chapter 110, Article III, both of the City Code.

15. Provisions of City Code to Prevail Over License in the Event of Conflict. To the extent that the provisions of the City Code, including the provisions of Chapter 102, Article IX and, if applicable, Chapter 110, Article III thereof, should be deemed to be in conflict with the provisions of this License, the said provisions of the City Code shall prevail and govern over the provisions of this License, subject only to the reservation of rights set forth in paragraph 16 hereof.

16. Reservation of Rights. The parties' execution of this License, and Licensee's placement of its facilities in City rights-of-way, shall not be construed or deemed to waive the respective rights or obligations of the parties under applicable state or federal law.

17. Police powers. By its acceptance of this License, Licensee acknowledges and agrees that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary for the safety and welfare of the public, and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power, subject only to the reservation of rights set forth in paragraph 16 hereof.

18. Complete Agreement. This License is the full and complete Agreement between the City and Licensee with respect to all matters relating to Licensee's use and occupancy of City right-of-way for installation, operation and maintenance of its utility system, and supersedes any and all other prior Licenses or agreements between the parties relating to the use or occupancy of City right-of-way for said purpose.

19. Proprietary Interest of City; Future Modifications. Licensee acknowledges and agrees that the City is entering into this license pursuant to the City's proprietary, rather than regulatory, interest in the right-of-way. As such, any future modifications to Licensee's equipment installed in the right-of-way pursuant to this License are subject to prior review and approval of the City as licensor and proprietor of the right-of-way, and are not subject to requirements of the Spectrum Act and/or FCC rules relating thereto.

NOW, THEREFORE, for and in consideration of the Licensee's payment of a \$500.00 fee to cover the costs of processing its application for renewal of license, and in consideration of the Licensee's

commitment to observe all terms and conditions of this License with respect to those portions of its utility system, as described in Exhibit A, page 1 attached hereto and by this reference made a part hereof, the Licensor City of Des Moines hereby issues this License.

**LICENSOR
CITY OF DES MOINES, IOWA**

By: _____
Steven L. Naber, P.E.
City Engineer

Date: _____, 20__.

Approved as to Form:

Assistant City Attorney

LICENSEE'S ACCEPTANCE OF LICENSE:

_____, by virtue of its execution of this License, and by virtue of its exercise of the privileges herein extended to it, does hereby accept and agree to abide by the terms and provisions of this License.

LICENSEE

Signature: _____

Date: _____, 20__.

Print Name:

Title:

STATE OF _____)

) ss.

COUNTY OF _____)

This License for Use of Public Right-of-Way was acknowledged before me on _____, 20__, by _____ (name of signor) as _____ (title) of _____ (name of licensee).

Notary Public