

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 5 of the Lincoln Municipal Code by adding
 2 a new Chapter 5.17 pertaining to telecommunications providers using the City’s right-of-way
 3 to establish definitions, standards, and permit fees for the use of right-of-way; to provide for
 4 insurance, bonding and construction standards for telecommunications facilities located in the
 5 right-of-way; to establish procedures for reviews of decisions regarding telecommunications
 6 facilities; and to provide for enforcement of this ordinance.

7 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

8 Section 1. That Title 5 of the Lincoln Municipal Code be amended by adding
 9 a new section numbered 5.17.010 to read as follows:

10 **5.17.010 Purpose.**

11 The purpose of this chapter is to:

- 12 (a) Establish a local policy concerning telecommunications providers;
- 13 (b) Establish clear and nondiscriminatory local guidelines, standards and time
 14 frames for the exercise of local authority with respect to the regulation of the right-of-way;
- 15 (c) Promote competition in telecommunications;
- 16 (d) Minimize unnecessary local regulation of telecommunications providers;
- 17 (e) Encourage the provision of advanced and competitive telecommunications
 18 facilities on the widest possible basis to the businesses, institutions and residents of the City;
- 19 (f) Permit and manage reasonable access to the public right-of-way of the City for
 20 telecommunications purposes on a competitively neutral and nondiscriminatory basis;
- 21 (g) Conserve the limited physical capacity of the public right-of-way held in public
 22 trust by the City;
- 23 (h) To the extent permitted by law, assure that the City's current and ongoing costs
 24 of granting and regulating private access to and use of the public right-of-way are paid by the
 25 telecommunications providers seeking such access and causing such costs;

1 (i) Assure that all telecommunications carriers providing facilities within the City
2 comply with the ordinances, rules and regulations of the City;

3 (j) Assure that the City can continue to fairly and responsibly protect the public
4 health, safety and welfare;

5 (k) Enable the City to discharge its public trust consistent with rapidly evolving
6 federal and state regulatory policies, industry competition and technological development.

7 Section 2. That Title 5 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 5.17.020 to read as follows:

9 **5.17.020 Definitions.**

10 Terms used in this chapter shall have the following meanings. Unless otherwise
11 expressly stated, words not defined in this chapter shall be construed consistent with Title 47
12 of the United States Code, and, if not defined therein, with their common and ordinary
13 meaning.

14 **Affiliate** shall mean a Person that (directly or indirectly) owns or controls, is owned or
15 controlled by, or is under common ownership or control with another Person.

16 **City Property** shall mean all real property now or hereafter owned by the City whether
17 in fee ownership or other interest.

18 **City** shall mean the City of Lincoln, Nebraska.

19 **FCC or Federal Communications Commission** shall mean the federal administrative
20 agency, or lawful successor, authorized to regulate and oversee Telecommunications Carriers,
21 Services and Providers on a national level.

22 **Grantee** shall mean permittees granted certain rights and obligations by the City, and
23 to the extent that an open video service or cable television operator provides
24 telecommunication services they shall be included herein as a grantee.

25 **Nebraska Public Service Commission or PSC** shall mean the state administrative
26 agency, or lawful successor, authorized to regulate and oversee Telecommunications Carriers,
27 Services and Providers in the State of Nebraska to the extent prescribed by law.

1 **Overhead Facilities** shall mean Utility Facilities and Telecommunications Facilities
2 located above the surface of the ground, including the underground supports and foundations
3 for such facilities.

4 **Person** shall mean corporations, companies, associations, joint stock companies, firms,
5 partnerships, limited liability companies, other entities and individuals.

6 **Private Communications System** shall mean a facility placed in whole or in part in the
7 right-of-way for the provision of communications in connection with a Person's business, but
8 not encompassing in any respect the provision of Telecommunications Services.

9 **Reseller** shall mean any Person who resells a Telecommunications Service, for which
10 it makes a separate charge, provided over a Telecommunications System, where that Person
11 does not own the underlying Telecommunications System used for the transmission.

12 **Right-of-way** shall mean the surface of and space above and below any real property
13 in the City in which the City has an interest as an owner or as a trustee for the public for
14 purposes of public travel, as they now or hereafter exist, including, but not limited to, all
15 public streets, highways, avenues, roads, alleys, easements, sidewalks, tunnels, viaducts, or
16 bridges; provided, however, this shall not include other public property for which a separate
17 authorization and agreement to utilize any part of same shall be required from the City.

18 **State** shall mean the State of Nebraska.

19 **Surplus Space** shall mean that portion of the usable space on a utility pole which has
20 the necessary clearance from other pole users, as required by the orders and regulations of the
21 PSC, to allow its use by a Telecommunications Carrier for a pole attachment.

22 **Telecommunications Carrier** shall mean every Person that directly or indirectly owns,
23 controls, operates or manages plant, equipment or property within the City, used or to be used
24 for the purpose of offering Telecommunications Service.

25 **Telecommunications Facilities** shall mean the plant, equipment and property within
26 the City used to power, transmit, receive, distribute, provide or offer Telecommunications
27 Service.

28 **Telecommunications Provider** shall mean every Person who provides Telecommuni-
29 cations Service over Telecommunications Facilities, including but not limited to persons,

1 cable, gas, water, wastewater and electric providers that provide Telecommunications Services
2 over Telecommunications facilities. However, other than for purposes of registration, wireless
3 providers and resellers to the extent they do not own telecommunications facilities located
4 in the right-of-way need not comply with the other provisions of this chapter during such time
5 of having no telecommunications facilities in the right-of-way unless applicable law would
6 permit them being subject to the provisions of this chapter.

7 **Telecommunications Service** shall mean the providing or offering for rent, sale or lease,
8 or in exchange for other value received, the transmittal of voice, data, image, graphic and
9 video programming information between or among points by wire, cable, fiber optics, laser,
10 microwave, radio, satellite or similar facilities, with or without benefit of any closed
11 transmission medium, but shall not include the provision of cable television service over a
12 franchised cable system or an open video system where an agreement or franchise has been
13 entered into with the City.

14 **Underground Facilities** shall mean Utility and Telecommunications Facilities located
15 under the surface of the ground, excluding the underground foundations or supports for
16 Overhead Facilities.

17 **Usable Space** shall mean the total distance between the top of a utility pole and the
18 lowest possible attachment point that provides the minimum allowable vertical clearance as
19 specified in the orders and regulations of the PSC, Nebraska Public Works Code, City Public
20 Works Code, National Electrical Safety Code and other applicable Federal, State and local
21 laws and regulations.

22 **Utility Facilities** shall mean the plant, equipment and property including, but not
23 limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment
24 located under, on or above the surface of the ground within the right-of-way and used or to
25 be used for the purpose of providing Utility or Telecommunications Services.

26 Section 3. That Title 5 of the Lincoln Municipal Code be amended by adding
27 a new section numbered 5.17.030 to read as follows:

1 **5.17.030 Registration and Fees.**

2 Except as otherwise provided herein, all Telecommunications Carriers or Tele-
3 communications Providers engaged in the business of transmitting, supplying or furnishing of
4 Telecommunications Service originating, terminating or existing within the City and using
5 telecommunications facilities in the City shall register with the City pursuant to this chapter
6 and pay a fee of \$200.

7 Section 4. That Title 5 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 5.17.040 to read as follows:

9 **5.17.040 Other Remedies.**

10 Nothing in this chapter shall be construed as limiting any other remedies that the City
11 may have, at law or in equity, for enforcement of this chapter with respect to right-of-way
12 management.

13 Section 5. That Title 5 of the Lincoln Municipal Code be amended by adding
14 a new section numbered 5.17.050 to read as follows:

15 **5.17.050 Registration Required.**

16 All Telecommunications Carriers and Telecommunications Providers having Tele-
17 communications Facilities within the corporate limits of the City, in whole or in part, shall
18 register with the City hereunder on forms provided by the Mayor or his or her designee which
19 shall include the following:

20 (a) The identity and legal status of the registrant, including any affiliates.

21 (b) The name, address and telephone number of the officer, agent or employee
22 responsible for the accuracy of the registration statement.

23 (c) A description of registrant's existing or proposed Telecommunications Facilities
24 within the City.

25 (d) Such other information as the City may reasonably require with respect to right-
26 of-way management.

27 Section 6. That Title 5 of the Lincoln Municipal Code be amended by adding
28 a new section numbered 5.17.060 to read as follows:

1 **5.17.060 Purpose of Registration.**

2 The purpose of registration is to:

3 (a) Provide the City with accurate and current information concerning the
4 Telecommunications Carriers and Telecommunications Providers who own or operate
5 Telecommunication Facilities within the City and use the right-of-way;

6 (b) Assist the City in enforcement of this chapter.

7 Section 7. That Title 5 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 5.17.070 to read as follows:

9 **5.17.070 Further Exception to Registration and Application for Permit.**

10 (a) A Person which provides Telecommunications Facilities solely for itself, its
11 affiliates or members between points in the same building, or between closely located
12 buildings under common ownership or control, provided that such company or Person does
13 not use or occupy any right-of-way of the City or other ways within the City, is excepted from
14 the registration requirements pursuant to this chapter.

15 (b) A Person wishing to construct, emplace, operate, replace, reconstruct, or
16 maintain a Private Communications System in the right-of-way must obtain a Permit therefor.
17 The Permit shall only authorize placement of the system in a specific portion of the right-of-
18 way for a limited and specific purpose in connection with the Person's business but not
19 encompassing in whole or in part the carriage of telecommunications for hire in the right-of-
20 way, and for a limited period of time. Such application must be in the form provided for by
21 regulation and must be accompanied by a filing fee, as may be fixed by regulation,
22 promulgated from time to time by the City.

23 (c) Nothing herein requires the City to apply the provisions of this chapter to itself
24 or to any of its utility divisions if the City determines that it is not in the public interest to do
25 so, and nothing herein shall be read to require the City to comply with this chapter, except
26 that in the event that the City or any of its utility divisions begins providing and thereafter
27 provides, Telecommunication Services to the public, the City and any of its utility divisions
28 shall comply with the provisions of this chapter.

1 Section 8. That Title 5 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 5.17.080 to read as follows:

3 **5.17.080 General Duties.**

4 (a) All Grantees, before commencing any construction in the right-of-way, shall
5 comply with all requirements of the Lincoln Municipal Code or other ordinances of the City.

6 (b) All Grantees shall have no ownership rights in the right-of-way, even though
7 they may be granted a permit to construct or operate their facilities.

8 (c) Undergrounding requirements for Telecommunications Facilities shall be as
9 provided in applicable City Codes, in this Title 5 and as provided in permits and requirements.

10 Section 9. That Title 5 of the Lincoln Municipal Code be amended by adding
11 a new section numbered 5.17.090 to read as follows:

12 **5.17.090 Interference With the Right-of-way.**

13 No Grantee may locate or maintain its Telecommunications Facilities so as to
14 unreasonably interfere with the use of the right-of-way by the City, by the general public or
15 other Persons authorized to use or be present in or upon the right-of-way.

16 Section 10. That Title 5 of the Lincoln Municipal Code be amended by adding
17 a new section numbered 5.17.100 to read as follows:

18 **5.17.100 Damage to Property.**

19 No Grantee or any Person acting on a Grantee's behalf shall take any action or permit
20 any action to be done which may impair, except in accordance with 5.17.130, or damage any
21 right-of-way, or other property located in, on or adjacent thereto. Any and all right-of-way,
22 public property or private property that is disturbed or damaged during the construction,
23 operation or repair of a Telecommunications Facility shall, after notice being given and an
24 opportunity to remedy, be promptly repaired, at the City's option, either by the City and then
25 billed to the responsible person or by the Person that disturbed or damaged the right-of-way,
26 public property or private property. Public property, private property and right-of-way must
27 be restored to a condition as good or better than before the disturbance or damage occurred
28 to the satisfaction of the City.

1 Section 11. That Title 5 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 5.17.110 to read as follows:

3 **5.17.110 Notice of Work.**

4 Subject to the requirements of section 5.17.400, no Grantee, or any Person acting on
5 the Grantee's behalf, shall commence any non-emergency work involving undergrounding,
6 excavation or obstructing in or about the right-of-way without two working days advance
7 written notice to the City. Any private property owner whose property will be affected by a
8 Grantee's work shall be afforded the same notice.

9 Section 12. That Title 5 of the Lincoln Municipal Code be amended by adding
10 a new section numbered 5.17.120 to read as follows:

11 **5.17.120 One Call Utility Underground Services Alert.**

12 Each operator of a Telecommunications System that places facilities underground shall
13 be a member of the One Call Utility established pursuant to Nebraska Revised Statutes
14 Sections 76-2301 et seq.

15 Section 13. That Title 5 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 5.17.130 to read as follows:

17 **5.17.130 Repair and Emergency Work.**

18 In the event of an unexpected repair or emergency, a Grantee may commence such
19 repair and emergency response work as required under the circumstances, provided the
20 Grantee shall notify the Director of Public Works and Utilities promptly, before such repair
21 or emergency work, or the next business morning thereafter if advance notice is not
22 practicable.

23 Section 14. That Title 5 of the Lincoln Municipal Code be amended by adding
24 a new section numbered 5.17.140 to read as follows:

25 **5.17.140 Maintenance of Facilities.**

26 Each Grantee shall maintain its facilities in good and safe condition and in a manner
27 that complies with all applicable federal, state and local requirements.

28 Section 15. That Title 5 of the Lincoln Municipal Code be amended by adding
29 a new section numbered 5.17.150 to read as follows:

1 **5.17.150 Facility Subject to Inspection.**

2 Every Telecommunications Facility shall be subject to the right of periodic inspection
3 by the City, after notification to the Grantee. Each operator must respond to requests for
4 information regarding its system and plans for the system as the City may from time to time
5 issue, including requests for information regarding its plans for construction, operation, and
6 repair of the right-of-way.

7 Section 16. That Title 5 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 5.17.160 to read as follows:

9 **5.17.160 Relocation or Removal of Facilities.**

10 Within 120 days, weather permitting, following written notice from the City, or
11 immediately in an emergency, a Grantee shall, to the extent permitted by law, at its own
12 expense, temporarily or permanently remove, relocate, change or alter the position of any
13 Telecommunications Facilities within the right-of-way whenever the Director of Public Works
14 and Utilities shall have determined that such removal, relocation, change or alteration is
15 reasonably necessary for:

16 (a) The construction, repair, maintenance or installation of any non-competitive City
17 or other non-competitive public improvements in or upon the right-of-way.

18 (b) The vacation of a public street or the release of a utility easement.

19 Section 17. That Title 5 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 5.17.170 to read as follows:

21 **5.17.170 Abandonment.**

22 A Telecommunications System operator may abandon any property in place upon
23 written notice to the City. However, if the City determines within 90 days of the receipt of
24 notice of abandonment from the operator that the safety, functioning or use of the public right-
25 of-way and facilities in the public right-of-way will be adversely affected, the operator must
26 remove its property by a date specified by the City.

27 Section 18. That Title 5 of the Lincoln Municipal Code be amended by adding
28 a new section numbered 5.17.180 to read as follows:

1 **5.17.180 Removal of Unauthorized Facilities.**

2 Within thirty days of written notice from the City following such 90-day period, any
3 Grantee, Telecommunications Carrier, Telecommunications Provider or other Person that
4 owns, controls or maintains any unauthorized telecommunications system, facility or related
5 appurtenances within the right-of-way shall, at its own expense, remove such facilities or
6 appurtenances from the right-of-way. If such Grantee, Telecommunications Carrier,
7 Telecommunications Provider or other Person fails to remove such facilities or appurtenances,
8 the City may cause the removal and charge the Grantee, Telecommunications Carrier,
9 Telecommunications Provider or other Person for the costs incurred. A telecommunications
10 system or facility is unauthorized and subject to removal in the following circumstances:

11 (a) Upon abandonment of a facility within the right-of-way without notice to the
12 City.

13 (b) If the system or facility was constructed or installed without the prior issuance
14 of a required construction permit.

15 (c) If the system or facility was constructed or installed at a location not included
16 in the permit.

17 (d) If the system or facility is not removed after request by the City pursuant to
18 Section 5.17.170

19 Section 19. That Title 5 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 5.17.190 to read as follows:

21 **5.17.190 Failure to Relocate.**

22 Telecommunications providers will be required to place their facilities underground
23 in situations where all existing utility services are underground and/or whenever all existing
24 Overhead Facilities go underground and/or whenever future City ordinances so require. If a
25 Grantee is required to relocate, change or alter the Telecommunications Facilities hereunder
26 and fails to do so, the City may cause such to occur and, to the extent permitted by law,
27 charge the Grantee for the costs incurred.

28 Section 20. That Title 5 of the Lincoln Municipal Code be amended by adding
29 a new section numbered 5.17.200 to read as follows:

1 **5.17.200 Emergency Removal or Relocation of Facilities.**

2 The City retains the right and privilege, after notifying Grantee, to cut or move any
3 Telecommunications Facilities located within the right-of-way as the City may determine to
4 be necessary, in response to any public health or safety emergency.

5 Section 21. That Title 5 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 5.17.210 to read as follows:

7 **5.17.210 Damage to Grantee's Facilities.**

8 To the extent permitted by Nebraska law, the City shall not be liable for any damage
9 to or loss of any Telecommunications Facility within the right-of-way as a result of or in
10 connection with any public works, public improvements, construction, excavation, grading,
11 filling, or work of any kind in the right-of-way by or on behalf of the City, provided the City,
12 in nonemergency situations, has first contacted the One Call Utility service.

13 Section 22. That Title 5 of the Lincoln Municipal Code be amended by adding
14 a new section numbered 5.17.220 to read as follows:

15 **5.17.220 Restoration of Right-of-way.**

16 Restoration shall comply with the following:

17 (a) When a Grantee, or any Person acting on its behalf, does any work in or
18 affecting any right-of-way, it shall, at its own expense, promptly remove any obstructions
19 therefrom and restore such right-of-way or property to the same, or better than the, condition
20 which existed before the work was undertaken. As used in this section, "promptly" shall mean
21 as required by the City's Director of Public Works and Utilities in the reasonable exercise of
22 the Director's discretion.

23 (b) If weather or other conditions do not permit the complete restoration required
24 hereunder, the Grantee shall temporarily restore the affected right-of-way or property. Such
25 temporary restoration shall be at the Grantee's sole expense, and the Grantee shall promptly
26 undertake and complete the required permanent restoration when the weather or other
27 conditions no longer prevent such permanent restoration.

28 (c) A Grantee or other Person acting on its behalf shall use suitable barricades, flags,
29 flagmen, lights, flares and other measures as required for the safety of all members of the

1 general public and to prevent injury or damage to any person, vehicle or property by reason
2 of such work in or affecting such right-of-way. Such measures shall include, but not be limited
3 to, conformance with the Manual on Uniform Traffic Control Devices standards and other City
4 requirements.

5 (d) Restoration and repair work shall be the responsibility of Grantee for two (2)
6 years after completion thereof.

7 Section 23. That Title 5 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 5.17.230 to read as follows:

9 **5.17.230 Facilities Maps.**

10 Each Grantee shall provide the City with two hard copies and one electronic version
11 of an accurate as-built map or maps certifying the location of all Telecommunications Facilities
12 within the right-of-way. Each Grantee shall provide updated as-built maps within thirty days
13 after completing construction and at least annually in electronic format.

14 The operator of each Telecommunications Facility shall provide a map or maps to the
15 City showing the location of its facilities, in such detail and scale as may be directed by the
16 Director of Public Works and Utilities. New system maps shall be promptly submitted to the
17 City when the facility expands or is relocated. Copies of maps shall be provided on disk, in
18 a commercially available electronic format specified by the Director of Public Works and
19 Utilities. If such maps cannot be provided electronically in the format specified, then Grantee
20 shall reimburse the City for the cost of converting hard copies or another format into that
21 required by the City, as specified in the Fees section or elsewhere in this Chapter.

22 Section 24. That Title 5 of the Lincoln Municipal Code be amended by adding
23 a new section numbered 5.17.240 to read as follows:

24 **5.17.240 Duty to Provide Information.**

25 Within ten days of a written request from the Mayor or his/her designee, each Grantee
26 shall furnish the Mayor or his/her designee with information sufficient to demonstrate:

27 (a) That all books, records, maps and other documents maintained by the Grantee
28 with respect to its facilities within the right-of-way have been made available for inspection

1 by the Mayor or his/her designee and the Director of Public Works and Utilities at reasonable
2 times and intervals.

3 (b) In the event that (a) above requires information that is a business or trade secret
4 and/or proprietary information and the operator wishes to protect the information against
5 disclosure, then operator shall provide said information to the City in a separate envelope
6 marked "Proprietary Information: DO NOT DISCLOSE." The City will exercise good faith
7 efforts to protect the confidentiality of the business or trade secrets or proprietary information
8 that is designated as such; provided, further, that (1) in the event a public disclosure request
9 is made for information marked as proprietary, and if the City Attorney determines that said
10 information may be subject to being disclosed; or (2) the City determines that the information
11 should be disclosed in connection with its enforcement of any provision of this chapter, or in
12 the exercise of its police or regulatory powers; then the City shall notify the operator of the
13 operator's opportunity to seek a protective order from a court with appropriate jurisdiction.
14 In the event that a protective order is not obtained within ten days or such shorter time
15 limitation set forth in State law, then the City may disclose said information. The operator is
16 obligated to reimburse and indemnify the City for all costs, damages and attorney fees that
17 may be awarded or assessed by the court for any actions the City took at the request of
18 operator or took to attempt to limit such disclosure.

19 Section 25. That Title 5 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 5.17.250 to read as follows:

21 **5.17.250 Grantee Insurance.**

22 Each Grantee shall, as a condition of the grant, secure and maintain the following
23 liability insurance policies insuring both the Grantee and the City, and its elected and
24 appointed officers, officials, boards, commissions, agents, representatives and employees as
25 additional insureds, which insurance shall be maintained for two years after termination of the
26 permit:

- 27 (a) Comprehensive general liability insurance with limits not less than:
28 (1) \$2,000,000 for bodily injury or death to each Person;
29 (2) \$2,000,000 for property damage resulting from any one accident; and

1 (3) \$2,000,000 for all other types of liability.

2 (b) Automobile liability for owned, non-owned and hired vehicles with a limit of
3 \$1,000,000 for each Person and \$1,000,000 for each accident.

4 (c) Worker's compensation within statutory limits and employer's liability insurance
5 with limits of not less than \$1,000,000.

6 (d) Comprehensive form premises-operations, completed operations, products
7 liability, explosions and collapse hazard, underground hazard and products completed hazard
8 with limits of not less than \$1,000,000.

9 (e) The liability insurance policies required by this section shall be maintained at
10 all times by the Grantee. Each such insurance policy shall contain the following endorsement:

11 "It is hereby understood and agreed that this policy may not be
12 canceled nor the intention not to renew be stated until 30 days
13 after receipt by the City, by registered mail, of a written notice
14 addressed to the Mayor or his/her designee of such intent to
15 cancel or not to renew."

16 (f) Within sixty days after receipt by the City of said notice, and in no event later
17 than thirty days prior to said cancellation, the Grantee shall obtain and furnish to the City
18 replacement insurance policies meeting the requirements of this chapter.

19 Section 26. That Title 5 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 5.17.260 to read as follows:

21 **5.17.260 General Indemnification.**

22 In addition to and distinct from the insurance requirements of this chapter, each
23 Grantee hereby agrees to defend, indemnify and hold the City and its officers, officials, boards,
24 commissions, employees, agents and representatives harmless from and against any and all
25 damages, losses, claims and expenses, including reasonable attorneys' fees and costs of suit
26 or defense, arising out of, resulting from or alleged to arise out of or result from the acts,
27 omissions, failure to act or misconduct of the Grantee or its affiliates, officers, employees,
28 agents, contractors or subcontractors in the construction, operation, maintenance, repair,
29 removal and replacement of its Telecommunications Facilities, and in providing or offering

1 telecommunications services over the facilities or network, whether such acts or omissions are
2 authorized, allowed or prohibited by this chapter or by an agreement made or entered into
3 pursuant to this chapter. This section shall not require the Grantee to indemnify or hold
4 harmless the City for any losses, claims, damages, and expenses arising out of or resulting from
5 the sole negligence of the City.

6 Section 27. That Title 5 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 5.17.270 to read as follows:

8 **5.17.270 Performance and Financial Guarantees.**

9 Before a permit granted pursuant to this chapter is effective, and as necessary there-
10 after, the Grantee shall provide and deposit such monies, bonds, letters of credit or other
11 instruments in form and substance acceptable to the City as may be required by this chapter,
12 or by an applicable permit agreement or other applicable code, ordinance, rules or regulations
13 of the City.

14 Section 28. That Title 5 of the Lincoln Municipal Code be amended by adding
15 a new section numbered 5.17.280 to read as follows:

16 **5.17.280 Security Fund.**

17 Each Grantee shall establish a permanent security fund with the City by depositing the
18 amount of up to \$50,000 with the City in cash, an unconditional letter of credit, or other
19 instrument acceptable to the City, which fund shall be maintained at the sole expense of
20 Grantee so long as any of Grantee's Telecommunications Facilities are located within the
21 right-of-way and for at least two years after removal of its telecommunications facilities. The
22 amount of the security fund may be raised or lowered by the City based on the City's own risk
23 analysis. This security fund shall be separate and distinct from any other bond or deposit
24 required.

25 (a) The fund shall serve as security for the full and complete performance of
26 Grantee's obligations under this chapter, including any costs, expenses, damages or loss the
27 City pays or incurs because of any failure attributable to the Grantee to comply with the codes,
28 ordinances, rules, regulations or permits of the City.

1 (b) Before any sums are withdrawn from the security fund, the Mayor or his/her
2 designee shall give written notice to the Grantee:

3 (1) Describing the act, default or failure to be remedied, or the damages, cost
4 or expenses which the City has incurred by reason of the Grantee's act or default;

5 (2) Providing a reasonable opportunity for the Grantee to first remedy the
6 existing or ongoing default or failure, if applicable;

7 (3) Providing a reasonable opportunity for the Grantee to pay any monies
8 due the City before the City withdraws the amount thereof from the security fund, if
9 applicable; and

10 (4) That the Grantee will be given an opportunity to review the act, default
11 or failure described in the notice with the Mayor or his/her designee.

12 (c) Grantee shall replenish the security fund within fourteen days after written
13 notice from the Mayor or his/her designee that there is a deficiency in the amount of the fund.

14 Section 29. That Title 5 of the Lincoln Municipal Code be amended by adding
15 a new section numbered 5.17.290 to read as follows:

16 **5.17.290 Construction and Completion Bond.**

17 Unless otherwise provided in a permit, a bond written by a surety acceptable to the
18 City equal to at least 20% of the estimated cost of constructing the Grantee's Telecom-
19 munications Facilities within the right-of-way shall be deposited before a construction permit
20 is issued. The City may elect to raise the amount of the bond depending on the City's analysis
21 of the risk of the project.

22 (a) The construction bond shall remain in force for two (2) years after substantial
23 completion of the work, as determined by the Director of Public Works and Utilities, including
24 restoration of right-of-way and other property affected by the construction.

25 (b) The construction bond shall guarantee, to the satisfaction of the City:

26 (1) Timely completion of construction;

27 (2) Construction in compliance with applicable plans, permits, technical
28 codes and standards;

1 (3) Proper location of the telecommunication facilities as specified by the
2 City;

3 (4) Restoration of the right-of-way and other property affected by the
4 construction;

5 (5) The submission of "as-built" maps after completion of the work and in
6 a format as required by this chapter;

7 (6) Timely payment and satisfaction of all claims, demands or liens for labor,
8 material or services provided in connection with the work.

9 Section 30. That Title 5 of the Lincoln Municipal Code be amended by adding
10 a new section numbered 5.17.300 to read as follows:

11 **5.17.300 Acts at Grantee's Expense.**

12 Any act that a Grantee is or may be required to perform under this chapter or
13 applicable law shall be performed at the Grantee's expense.

14 Section 31. That Title 5 of the Lincoln Municipal Code be amended by adding
15 a new section numbered 5.17.310 to read as follows:

16 **5.17.310 Remedies Cumulative.**

17 All remedies under this chapter are cumulative unless otherwise expressly stated. The
18 exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy
19 or the payment of liquidated damages relieve any Person of its obligations to comply with its
20 permit. Remedies may be used singly or in combination. In addition, the City may exercise
21 any rights it has at law or equity. Recovery by the City of any amounts under insurance, the
22 performance bond, the security fund or letter of credit, or otherwise, does not limit a
23 Telecommunications System operator's duty to indemnify the City in any way.

24 Section 32. That Title 5 of the Lincoln Municipal Code be amended by adding
25 a new section numbered 5.17.320 to read as follows:

26 **5.17.320 Coordination of Construction Activities.**

27 All Grantees are required to cooperate with the City and with each other as follows:

1 (a) By December 1 of each year, each Grantee shall provide the Director of Public
2 Works and Utilities with a schedule of its proposed major construction activities which may
3 affect the right-of-way for the next year.

4 (b) The City shall prepare a one-year repaving plan indicating proposed right-of-way
5 reconstruction, repaving and resurfacing. Such plan shall be updated annually, after receipt
6 of the construction plans of the various Grantees.

7 (c) Each Grantee shall meet with the City, other Grantees and users of the right-of-
8 way annually or as determined by the City to schedule and coordinate construction.

9 (d) All construction locations, activities and schedules shall be coordinated, as
10 ordered by the Director of Public Works and Utilities, to minimize public inconvenience,
11 disruption or damages.

12 (e) Whenever two or more Grantees propose major excavations in the same area
13 within any one year period, the City may require that they jointly excavate to minimize
14 continual disruption to the right-of-way.

15 Section 33. That Title 5 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 5.17.330 to read as follows:

17 **5.17.330 Construction Standards.**

18 No Person shall commence or continue with the construction, installation or operation
19 of Telecommunications Facilities within the City except as provided in this chapter, provided,
20 however, this chapter shall be in addition to the requirements of the State, County or City
21 Codes, as such was enacted or has or in the future is amended from time to time ("Codes").
22 In the event of a conflict between the aforesaid Codes and this chapter, on the effective date
23 of this chapter the standards of this chapter shall control. As subsequent amendments may be
24 made to the Codes, any conflicts with this chapter, shall be resolved in favor of the specific
25 Code amendment. Construction, operation or repair and similar formulations of that term
26 means the named actions interpreted broadly, encompassing, among other things, installation,
27 extension, maintenance, replacement of telecommunication facilities or components,
28 relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and
29 excavation.

1 Section 34. That Title 5 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 5.17.340 to read as follows:

3 **5.17.340 Construction Codes.**

4 Telecommunications Facilities shall be constructed, installed, operated and maintained
5 in accordance with all applicable federal, state and local codes, rules and regulations
6 including, but not limited to, the National Electrical Safety Code. Telecommunications
7 Facilities shall comply with the most recent standards in the Codes. In the event of a conflict
8 between the standards in the Codes, public works standards, other local standards and other
9 chapters and this chapter, on the effective date of this chapter the provisions of this chapter
10 shall apply. As other chapters, public works standards, other local standards are from time to
11 time amended, such amended provisions shall apply as determined by the City.

12 Section 35. That Title 5 of the Lincoln Municipal Code be amended by adding
13 a new section numbered 5.17.350 to read as follows:

14 **5.17.350 Construction Permits.**

15 No Person shall construct or install any Telecommunications Facilities within the City
16 without first obtaining a construction permit therefore, provided, however:

17 (a) No permit shall be issued for the construction or installation of Telecommuni-
18 cations Facilities within the City unless the Telecommunications Carrier or Telecom-
19 munications Provider has filed a registration statement with the City pursuant to this chapter.

20 (b) No permit shall be issued to cut any right-of-way, the surface of which is less
21 than two years old, unless the Grantee, to the satisfaction and the dimensions of the Director
22 of Public Works and Utilities, overlays or paves the surface of such right-of-way which is cut
23 by the Grantee.

24 Section 36. That Title 5 of the Lincoln Municipal Code be amended by adding
25 a new section numbered 5.17.360 to read as follows:

26 **5.17.360 Applications.**

27 The application shall be accompanied by drawings, plans and specifications in
28 sufficient detail to demonstrate;

1 (a) The location and route of all facilities the applicant proposes to be installed on
2 existing utility poles in the right-of-way.

3 (b) The location and route of all facilities to be located under the surface of the
4 ground by installer, including line and grade, in locations as decided by the City, along the
5 route which are within the right-of-way.

6 (c) To the extent such information is made accessible to Grantee, the location of
7 all existing underground utilities, conduits, ducts, pipes, mains and installations which are
8 within the right-of-way along the route proposed by the applicant. If the applicant is aware
9 of other facilities within its proposed right-of-way route, but has not been able to obtain
10 information pertaining to such facilities, the applicant must demonstrate to the City that it
11 made reasonable attempts to obtain such information.

12 (d) The nature and location of all appurtenances the applicant proposes to place in
13 the right-of-way, either above or below ground in accordance with applicable City Zoning and
14 Planning Code provisions.

15 (e) The construction methods to be employed for protection of existing structures,
16 fixtures and facilities within or adjacent to the right-of-way.

17 (f) The location, dimension and types of all trees within or adjacent to the right-of-
18 way along the route proposed by the applicant, together with a landscape plan for protecting,
19 trimming, removing, replacing and restoring any trees or areas to be disturbed during
20 construction.

21 (g) The applicant must obtain any other requisite and necessary approvals from the
22 City and other utilities or entities before it can locate any facilities, including but not limited
23 to antenna and powering facilities, on any poles in the City.

24 Section 37. That Title 5 of the Lincoln Municipal Code be amended by adding
25 a new section numbered 5.17.370 to read as follows:

26 **5.17.370 Engineer's Certification.**

27 All permit applications shall be accompanied by the certification of a registered
28 professional engineer that the drawings, plans and specifications submitted with the
29 application comply with applicable technical codes, rules and regulations.

1 Section 38. That Title 5 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 5.17.380 to read as follows:

3 **5.17.380 Traffic Control Plan.**

4 All permit applications which involve work on, in, under, across or along any right-of-
5 way shall be accompanied by a traffic control plan demonstrating the protective measures and
6 devices that will be employed.

7 Section 39. That Title 5 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 5.17.390 to read as follows:

9 **5.17.390 Issuance of Permit.**

10 Within a reasonable period of time not to exceed 90 days of time after submission of
11 all plans, documents and any supplemental information required of the applicant and payment
12 of necessary permit fees, the Director of Public Works and Utilities shall issue a permit
13 authorizing construction of the telecommunication facilities, subject to such further
14 conditions, restrictions or regulations affecting the time, place and manner of performing the
15 work as the Director of Public Works and Utilities may deem necessary or appropriate.

16 Section 40. That Title 5 of the Lincoln Municipal Code be amended by adding
17 a new section numbered 5.17.400 to read as follows:

18 **5.17.400 Construction Schedule.**

19 The permittee shall submit a final written construction schedule to the Director of
20 Public Works and Utilities ten working days before commencing any work in or about the
21 right-of-way. Except in an emergency, the permittee shall further provide written notification
22 to the Director of Public Works and Utilities not less than two working days in advance of any
23 excavation or work in the right-of-way.

24 Section 41. That Title 5 of the Lincoln Municipal Code be amended by adding
25 a new section numbered 5.17.410 to read as follows:

26 **5.17.410 Compliance with Permit.**

27 All construction practices and activities shall be in accordance with the permit and
28 approved final plans and specifications for the facilities. The Director of Public Works and

1 Utilities and his or her representative shall be provided access to the work. Failure to comply
2 with such requirements may result in an immediate stoppage of work.

3 Section 42. That Title 5 of the Lincoln Municipal Code be amended by adding
4 a new section numbered 5.17.420 to read as follows:

5 **5.17.420 Display of Permit.**

6 The permittee shall maintain a copy of the construction permit and approved plans at
7 the construction site, which shall be displayed and made available for inspection by the
8 Director of Public Works and Utilities or his designee, City inspection personnel and other
9 pertinent City staff, at all times when construction work is occurring. Failure to have the
10 Permit or approved plans on-site may result in immediate stoppage of work.

11 Section 43. That Title 5 of the Lincoln Municipal Code be amended by adding
12 a new section numbered 5.17.430 to read as follows:

13 **5.17.430 Survey of Underground Facilities.**

14 If the construction permit specifies the location of facilities by depth, line, grade,
15 proximity to other facilities or other standards, the permittee, at the discretion of the Director
16 of Public Works and Utilities, shall cause the location of its facilities to be verified by a
17 registered Nebraska land surveyor. The permittee, at its expense, shall relocate any facilities
18 which are not located in compliance with permit requirements.

19 Section 44. That Title 5 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 5.17.440 to read as follows:

21 **5.17.440 Noncomplying Work.**

22 Upon order of the Director of Public Works and Utilities, all work which does not
23 comply with the permit, the approved plans or specifications for the work or other City
24 requirements shall be removed or cured if allowed by the Director of Public Works and
25 Utilities.

26 Section 45. That Title 5 of the Lincoln Municipal Code be amended by adding
27 a new section numbered 5.17.450 to read as follows:

1 **5.17.450 Completion of Construction.**

2 The permittee shall promptly complete all construction activities so as to minimize
3 disruption of the right-of-way and other public and private property. All construction work
4 authorized by a permit within the right-of-way, including restoration, must be completed
5 within 180 days of the date of issuance, weather permitting, or at such other interval as the
6 City may specify in writing upon issuance, or prior to expiration, of the permit.

7 Section 46. That Title 5 of the Lincoln Municipal Code be amended by adding
8 a new section numbered 5.17.460 to read as follows:

9 **5.17.460 Landscape Restoration.**

10 (a) All trees, landscaping and grounds removed, damaged or disturbed as a result
11 of the construction, installation, maintenance, operation, repair or replacement of
12 Telecommunications Facilities, which is done shall, at a minimum, be replaced or restored to
13 the condition existing prior to performance of the work.

14 (b) All restoration work within the right-of-way shall be done in accordance with
15 landscape plans approved by the Director of Public Works and Utilities.

16 Section 47. That Title 5 of the Lincoln Municipal Code be amended by adding
17 a new section numbered 5.17.470 to read as follows:

18 **5.17.470 Location of Facilities.**

19 Unless otherwise required in current or future City ordinances regarding underground
20 construction requirements, all facilities shall be constructed, installed and located in
21 accordance with the following terms and conditions:

22 (a) Telecommunications Facilities shall be installed within an existing underground
23 duct or conduit to the extent technologically and economically practicable.

24 (b) Subject to the other provisions of this chapter and the City's Zoning Code,
25 Telecommunications Facilities on pole attachments shall be installed to existing utility poles
26 only, and then only if surplus space is available. Notwithstanding the foregoing, no aerial
27 installations may be made in new development areas.

1 (c) Whenever all existing Telecommunications Facilities are located underground
2 within the right-of-way, additional Telecommunications Facilities shall also be located
3 underground.

4 (d) All above ground appurtenances shall be properly screened in accordance with
5 applicable provisions of the City's Zoning Code. Such appurtenances may be placed above
6 ground in a dedicated public utility easement ("PUE"), in the right-of-way where no PUE exists,
7 or in City-owned property subject to an easement or other authorization between the Grantee
8 and the City. Siting of such equipment in the public utility easement, public right-of-way, or
9 on City-owned property shall be done in such a manner so that the line-of-sight for traffic
10 along the right-of-way is not impaired, and any negative visual impact on the streetscape is
11 minimized. All above ground appurtenances on a site must be screened, and clustered with
12 other utility equipment where practical.

13 Section 48. That Title 5 of the Lincoln Municipal Code be amended by adding
14 a new section numbered 5.17.480 to read as follows:

15 **5.17.480 Conduit Occupancy.**

16 In furtherance of the public purpose of reduction of right-of-way excavation, it is the
17 goal of the City to encourage both the shared occupancy of underground conduit as well as
18 the construction, whenever possible, of excess conduit capacity for occupancy of future right-
19 of-way occupants. The Mayor may prohibit emplacement of such facilities along the route or
20 any part thereof for 24 months or after such other, longer period as is necessary to protect the
21 public or to mitigate disruption or damage to the right-of-way.

22 Section 49. That Title 5 of the Lincoln Municipal Code be amended by adding
23 a new section numbered 5.17.490 to read as follows:

24 **5.17.490 Joint Use.**

25 Situations may occur in the future where the City or its designees may desire to place
26 its own cable, conduit and fiber optic cable in trenches and/or bores opened by Grantees for
27 non-competitive purposes. Therefore, as Grantees undertake construction now or in the
28 future, Grantees shall submit these plans to the City so as to allow the City or any other public
29 entity it may designate, the opportunity to install non-competitive facilities in the areas to be

1 trenched or bored by the Grantees. In addition, Grantees shall cooperate with the City or its
2 designees for non-competitive purposes in any other construction by the Grantees that
3 involves trenching or boring, provided that the City or its designees has first notified a Grantee
4 in some manner that it is interested in sharing the trenches or bores in the area where the
5 Grantee's construction is occurring. Grantee shall allow the City or its designees to lay its
6 cable, conduit and fiber optic cable in the Grantee's trenches and bores, provided it shares
7 incrementally in the cost of the trenching and boring. Any request to install facilities into a
8 trench cannot unreasonably delay Grantee's construction timeline. The City or its designees
9 shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried
10 in the Grantee's trenches and bores under this paragraph.

11 Section 50. That Title 5 of the Lincoln Municipal Code be amended by adding
12 a new section numbered 5.17.500 to read as follows:

13 **5.17.500 Occupancy of City Owned Conduit.**

14 In furtherance of the same objectives of Section 5.17.480, if the City owns or leases
15 conduit in the path of Grantee's proposed Telecommunications Facilities, and provided it is
16 economically and technologically feasible for Grantee to occupy the conduit owned or leased
17 by the City, Grantee shall be encouraged to occupy the conduit owned or leased by the City
18 in order to reduce the necessity to excavate the right-of-way.

19 Section 51. That Title 5 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 5.17.510 to read as follows:

21 **5.17.510 Compensation for City Property.**

22 If the right is granted, by lease, to use and occupy City Property which is not right-of-
23 way, for the installation or use of Telecommunications Facilities, the compensation to be paid
24 shall be fixed by the City.

25 Section 52. That Title 5 of the Lincoln Municipal Code be amended by adding
26 a new section numbered 5.17.520 to read as follows:

27 **5.17.520 Construction Permit Fee.**

28 Prior to issuance of a construction permit, the applicant shall pay a permit fee. The
29 purpose of the construction permit fee shall, to the extent permitted by law, be to recover the

1 City's attributable costs and expenses, including but not limited to the cost of the permit
2 process, plan review, inspectors time and expense, staff time, the costs of consultants and
3 engineers retained by the City, electronic map preparation and conversion when necessary,
4 and street life diminution as a result of permittee's proposed and actual occupancy of the right-
5 of-way.

6 Section 53. That Title 5 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 5.17.530 to read as follows:

8 **5.17.530 Regulatory Fees and Compensation Not a Tax.**

9 The regulatory fees and costs provided for in this chapter, and any compensation
10 charged and paid for the rights provided for herein, are separate from, and additional to, any
11 and all federal, state, local and City taxes as may be levied, imposed or due from a
12 Telecommunications Carrier or Telecommunications Provider, its customers or subscribers,
13 or on account of the lease, sale, delivery or transmission of Telecommunications Services.

14 Section 54. That Title 5 of the Lincoln Municipal Code be amended by adding
15 a new section numbered 5.17.540 to read as follows:

16 **5.17.540 Fee Review Process.**

17 Any applicant or Grantee may initiate a review of the fees established in this chapter.
18 Within ten days of notice of the fee determined by the City, applicant or Grantee may request
19 the Mayor evaluate the reasonableness of the fee.

20 Section 55. That Title 5 of the Lincoln Municipal Code be amended by adding
21 a new section numbered 5.17.550 to read as follows:

22 **5.17.550 Context.**

23 When not inconsistent with the context, words used in the present tense include the
24 future tense, words in the plural number include the singular number, and words in the
25 singular number include the plural number.

26 Section 56. That Title 5 of the Lincoln Municipal Code be amended by adding
27 a new section numbered 5.17.560 to read as follows:

1 **5.17.560 Ordinance Not a Contract.**

2 The City expressly reserves the right to amend this ordinance from time to time in the
3 exercise of its lawful powers. The provisions of this ordinance shall not be construed to create
4 or be a contract.

5 Section 57. That Title 5 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 5.17.570 to read as follows:

7 **5.17.570 No Waiver.**

8 The failure of the City to enforce any provision of this chapter on any occasion shall
9 not operate as a waiver or estoppel of this right to enforce any provision of this chapter on any
10 other occasion, nor shall the failure to enforce any prior ordinance or City Charter provisions
11 affecting Telecommunications Facilities or Telecommunications Providers or Telecommuni-
12 cations Carriers act as a waiver or estoppel against application of this chapter or any other
13 provision of applicable law.

14 Section 58. That Title 5 of the Lincoln Municipal Code be amended by adding
15 a new section numbered 5.17.580 to read as follows:

16 **5.17.580 Penalty.**

17 Any Person found violating, disobeying, omitting, neglecting or refusing to comply with
18 any of the provisions of this chapter shall be guilty of a misdemeanor. Upon conviction any
19 person violating any provision of this chapter shall be subject to a fine of up to five hundred
20 dollars (\$500). A separate and distinct violation shall be deemed committed each day on
21 which a violation occurs or continues.

22 Section 59. That Title 5 of the Lincoln Municipal Code be amended by adding
23 a new section numbered 5.17.590 to read as follows:

24 **5.17.590 Severability.**

25 If any section, subsection, sentence, clause, phrase, or other portion of this chapter or
26 its application to any Person is, for any reason, declared invalid, in whole or in part by any
27 court or agency of competent jurisdiction, said decision shall not affect the validity of the
28 remaining portions hereof.

1 Section 60. That Sections 1 through 59 hereof shall be codified in the Lincoln
2 Municipal Code as Chapter 5.17 entitled "Telecommunications Ordinance."

3 Section 61. That this ordinance shall take effect and be in force from and after
4 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

Assistant City Attorney

Staff Review Completed:

Administrative Assistant