

## FIBER AND CONDUIT SHARING AGREEMENT

THIS FIBER AND CONDUIT SHARING AGREEMENT ("Agreement") is entered into this 7 day of April, 2011, by and between the City of Lincoln, a Nebraska municipal corporation ("City") and the Board of Regents of the University of Nebraska, a public corporate body and agency of the State of Nebraska ("University").

WHEREAS, the City is organized and existing under and by virtue of Article XX of the Nebraska Constitution and possesses plenary power and authority over the use and occupation of the public rights of way within its corporate boundaries; and

WHEREAS, the University desires to locate, operate and maintain certain Conduits, Fibers and other appurtenances within public right of way; and

WHEREAS, the City and University are authorized to grant permission to occupy the Conduits and use the Fibers; and

WHEREAS, the parties have agreed to jointly share the Conduits, Fibers and other appurtenances in accordance with this Agreement; and

WHEREAS, the parties have agreed to be bound by the terms and conditions set forth herein which shall govern the uses of the public rights of way, and the Conduits and Fiber described above;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and mutual promises set forth herein, the parties agree as follows:

### Article I - Definitions

As used in this Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this Agreement, the word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this Agreement.

1. "Cable" shall mean all fiber optic cable now or hereafter owned or controlled by Unite located within the Jurisdiction as now or hereafter constituted.
2. "Conduit" shall mean the type and location of conduit used and installed as provided in this Agreement and shall include the Maxcell sock installed pursuant to this Agreement.
3. "Facilities" means all physical components of the parties' network located within

the Jurisdiction, including without limitation cable, poles, wires, cables, pipes, underground conduits, ducts, equipment cabinets, manholes, handholes, vaults, fiber optic cables and devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.

4. "Fibers" shall mean the number and type of optical fibers at all locations as provided in this Agreement.

5. "Jurisdiction" shall mean within the corporate boundaries of the City of Lincoln as now or hereafter constituted.

6. "Rights of Way" shall mean City streets, roads, alleys, sidewalk areas and other dedicated rights of way within the Jurisdiction, together with dedicated utility easements within the Jurisdiction and easements deeded to the City for utility purposes. The term shall not include any other property owned or leased by the City for any other proprietary, public or municipal use.

7. "Term" shall mean twenty (20) years from the date hereof.

8. "Underlying Rights" shall mean all deeds, leases, easements, pole sharing agreements and other interests by which the parties are authorized to install, operate and maintain their networks upon any real or personal property, whether public or private.

#### Article II – ROW

1. Subject to the parties compliance at all times with all of the terms and conditions of this Agreement, all of City's ordinances, and all applicable local, state and federal laws, and further subject to the City's lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit and building code requirements) and the City's prior and superior right to usage for municipal purposes, City hereby grants to the University, insofar as it has or may have the requisite power and authority to do so, permission to make reasonable use of the Rights of Way and the Conduit, described herein, to construct, install, operate and maintain the Facilities within the Jurisdiction; provided, however, that with respect to state highways, the parties must separately obtain consent from the Nebraska Department of Transportation.

2. The permissions granted herein to make reasonable use of the Rights of Way shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right to make or grant a similar use of the Rights of Way to any other person or persons.

3. The City retains the following rights in regard to this Agreement:

(a) To terminate this Agreement for misuse, non-use or failure of the University to comply with the provisions hereof.

(b) To use, control and regulate the use of the City streets, roads, easements, other public places and the Rights of Way, and the space above and beneath the same; and

(c) To require the removal or relocation of any of the Facilities from the Rights of Way if necessary, whenever the Director of Public Works and Utilities shall have determined that such removal, relocation, change or alteration is reasonably necessary. Such removal or relocation work shall be at the University's sole cost and expense when the work is required for: (i) The construction, repair, maintenance or installation of any non-competitive City or other non-competitive public improvements in or upon the right-of-way; or (ii) The vacation of a public street or the release of a utility easement, in the reasonable judgment of the City, for any public or municipal purpose or project. Relocations for any other purpose shall be at the City's expense.

(d) The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property, whether in the Rights of Way or outside of the Rights of Way.

### Article III - Use of Rights of Way

1. Facilities shall be located, installed and maintained so that none of the Facilities endanger the lives, health or safety of persons, or interfere with any public improvements the City or other governmental entities or other parties (including any storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Facilities hinder or obstruct the free use of the streets or other public ways. All Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. All construction, excavation, maintenance and repair work done by the parties shall be done in a good workmanlike and expeditious manner which minimizes the inconvenience to the general public and individuals. All such construction, excavation, maintenance and repair work done by or on behalf of the parties shall comply with all applicable codes of the City and the State of Nebraska. The City shall have the right to inspect all construction or excavation work to insure compliance with applicable codes and permits, and may order corrective work when necessary.

3. The installation, maintenance, renovation and replacement of Facilities by the parties shall be subject to regulation by City through LMC 5.17, including but not limited to, (a) the location of Facilities in or upon the streets, alleys and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, street lights, traffic signals, and all other municipal or authorized public use of the Rights of Way. The City's Director of Public Works may direct and require the location of Facilities within a defined telecommunications corridor within any street or other Right of Way or otherwise at a

specific location to minimize interference with other facilities or utilities. All Facilities shall be installed and maintained in such manner as to minimize interference with trees, natural features and vegetation.

#### Article IV - Additional City Regulation

The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property.

#### Article V - Coordination and Conduit/Pole Sharing

In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, holders of permits and other interests needing to locate or maintain Facilities in the Rights of Way for the benefit of the public, it is imperative that any Conduit sharing be encouraged to the greatest extent possible. In furtherance of such purposes, the parties agree, wherever feasible, that it shall cooperate with City in placing Conduit within the Rights of Way and in sharing unused space within underground Conduits owned by the parties, and upon any poles or other above ground Facilities owned by the parties.

#### Article VI – Indemnification and Limitation of Liability

1. Indemnification. In all matters not within the context of Article VIII, to the extent authorized by law, the parties shall indemnify, defend and hold harmless the other parties, their officers, employees, elected officials, boards, commissions and any other legal entity affiliated therewith from and against all claims brought by third parties which any such Indemnified Party (defined below) is required to pay or to assume which have resulted from a breach of any duty or obligation imposed by law, including statutes, ordinances, regulations, orders, decrees, judgments and the law of torts (including without limitation gross negligence, strict liability, or willful misconduct), or this Agreement by the Indemnifying Party (defined below).

2. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability.

3. Cooperation. The Parties shall cooperate with each other in the defense of any

third-party action related to this Agreement and shall furnish each other all such further information that they have the right and power to furnish as may reasonably be necessary to defend such third-party action.

4. Immunities. Nothing in this Agreement is intended, nor shall it be construed, to create or extend any rights, claims or benefits to, or assume any liability for or on behalf of, any third party, or to waive any immunities or limitations otherwise conferred upon City or the University under or by virtue of federal or state law.

5. Notice and Defense of Third-Party Actions. Each Person entitled to indemnification under this Article (an "Indemnified Party") shall give prompt written notice to each party that is obligated to provide such indemnification (an "Indemnifying Party") of the commencement or assertion of any claim by a third party (collectively, a "third-party action") in respect of which an Indemnified Party will seek indemnification hereunder, which notice shall state, to the extent known to the Indemnified Party, the basis on which the claim for indemnification is made, the facts giving rise to or the alleged basis of the third-party action, and the amount (which may be estimated) of liability asserted by reason of the claim. Such notice shall also include a copy of the document (if any) by or in which the third-party action is commenced or asserted. Any failure so to notify the Indemnifying Party shall not relieve it from any liability that it may have to the Indemnified Party under this Agreement unless the failure to give such notice materially and adversely prejudices the Indemnifying Party and then only to the extent of such prejudice. The Indemnifying Party shall have the right to assume control of the defense of or settle or otherwise dispose of such third party action on such terms as the Indemnifying Party deems appropriate; *provided, however*, that:

(a) The Indemnified Party shall be entitled, at its own expense, and without unreasonable interference with the actions of the Indemnifying Party, to participate in the defense of third-party actions;

(b) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement, compromise, admission or any acknowledgment of the validity of a third-party action or any liability in respect thereof, which consent shall not be unreasonably withheld;

(c) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such third-party action; and

(d) The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of) and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or other acknowledgment of any third-party action (i) as to which the Indemnifying Party fails to assume the defense within a reasonable length of time or (ii) to the extent the third-party action seeks an

order, injunction or other equitable relief against the Indemnified Party which, if successful, would have a material adverse effect on the business, financial condition, operations or properties of the Indemnified Party; provided, however, that the Indemnified Party shall make no settlement, compromise, admission or other acknowledgment which would give rise to liability on the part of the Indemnifying Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

6. Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

(b) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

(c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and

(d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court, or body.

#### Article VII - Insurance

Prior to commencement of any installation of Facilities under this Agreement, any installation contractor shall procure and thereafter continuously maintain, for as long as this Agreement remains in effect, Commercial General Liability ("CGL") insurance in the amounts indicated in the City's Insurance Requirements for All City Contracts document, Exhibit B, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this Agreement shall be defined as an insured contract. The policy shall identify the City and University as additional insureds, shall waive subrogation of claims against the City and University as additional insureds, and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse and underground property damage hazards. A certificate of insurance shall be filed with the City Attorney's office prior to commencement of installation of Facilities, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to City prior to cancellation or material change of any insurance referred to therein. A certificate of insurance evidencing compliance with the requirements set forth herein shall also be delivered to the University.

### Article VIII - Term

The term of this Agreement shall be for a period of twenty (20) years from and after the date of the Agreement, unless sooner terminated as provided in this Agreement.

### Article IX - Grant of Conduit and Fibers

1. The University shall pay all installation costs of the Conduit and Fiber installed pursuant to this Agreement. The route of such Conduit and Fiber shall be identified on the drawing attached hereto which is marked as Exhibit "A" and incorporated herein by reference. The University shall install a 3 inch three cell Maxcell sock in a portion of the City's existing Conduit from Whittier school to the intersection of Vine and Antelope Valley. After installation, the ownership of the Maxcell sock shall be turned over to the City. The University shall also install a fiber bundle of twelve fibers within one cell of the Maxcell sock. The University shall hold title to the twelve Fibers installed herein and herein grants the City unlimited use of two of such fibers. The City will grant the University the unlimited use of two fibers within the City's network running from the intersection of Vine and Antelope Valley to 12<sup>th</sup> Street and Military Tower. Both the City and UNL shall maintain their own firewalls connecting the two networks.

2. Legal title to the Facilities including sock, sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, and other hardware needed or used to fasten or support the Cable shall be held by the City. Nothing herein shall be deemed to relinquish City's right, title, interest or control of the public Right of Ways.

3. City and University shall have the right to pledge its rights and privileges contained in this Agreement, to secure financial obligations to third parties without the need to obtain consent. City and University shall keep the Facilities and other property subject to this Agreement free from any liens, rights or claims of any third party.

4. (a) City and University may not sell or lease "dark Fiber", capacity or bandwidth on Fibers that are the subject of this Agreement to third parties or resell or otherwise assign its rights and privileges contained in this Agreement to third parties without the written consent of all the parties to this Agreement.

(b) City and University shall be permitted to connect the Fibers to, and use the Fiber for use and benefit of, each entity's elected bodies, departments, joint departments with the County, legal enterprises and affiliated entities which are established or created in whole or in part by City Charter, Ordinance or Resolution or interlocal agreement and which perform, in whole or in part, authorized functions of City government or the University in either its propriety or governmental capacities.

## Article X - Maintenance of Fibers

### 1. Maintenance.

(a) The University shall maintain and repair the Fibers it installs pursuant to this agreement so as to assure continuing conformity of the Fibers with their respective operating specifications.

(b) Both parties shall respond in a timely manner to any interruption of service or failure of the Fibers over which they exercise control to operate in accordance with this Agreement.

(c) Each party shall be responsible for routine maintenance of all Conduit and Fiber, within its network and costs thereof.

(d) The University shall be responsible for all One Call locates of their Fiber within Conduits and socks installed pursuant to this Agreement. The City shall be responsible for all One Call locates of City Fiber and existing Conduit.

## Article XI - Use and Connection of Fibers

1. Use of Facilities. City and University may use the Fibers for their internal uses to provide any lawful telecommunications and data transmission. City and University shall also not use the Fibers in any manner that is not in compliance with (i) any and all applicable government codes, ordinances, laws, rules, regulations and/or restrictions, and (ii) the Underlying Rights, as such may be amended from time to time. Neither City or University shall use, any product or service that fails to comply with any applicable safety rules or that would violate any state or federal environmental laws. City and University shall have no limitations on the types of electronics or technologies employed to utilize the Fibers subject to its use of commercially reasonable safety procedures and so long as such electronics or technologies do not interfere with the quiet use and enjoyment of or create any risk of damage to other users.

2. Connection. If City or University desires to connect other fiber optic cables to the Fibers or create connections with buildings or other structures among the network route, the parties will cooperate with such party to acquire access. City and University shall have the right, after acquiring permission to do so, to place their own connecting Facilities within public rights of way between the Fibers and such adjoining properties. Such placement of connecting Facilities by the request of a party shall be at such party's sole cost and expense (including Costs incurred in providing oversight of any contractors excavating on the Rights of Way or near the Cable to make such connection) as contemplated in this Agreement. Each connection to provided Facilities requiring a Cable to be entered will be performed at such party's sole expense.

## Article XII - Remedies, Termination, Removal

1. In the event of any breach of the terms of this Agreement by either party, the non-breaching party shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one (1) or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one or more of them constitute any bar or limitation to the exercise of any other: (a) specific performance or injunctive relief, (b) monetary damages, and (c) termination. In the event either party is required to commence an action to enforce its rights under this Agreement or to obtain remedies provided above and substantially prevails therein, such party shall be entitled to recover its costs, but excluding attorneys fees and expert witness fees.

2. Before terminating the Agreement for cause on account of any default, the non-defaulting party shall provide the party in default with written notice of the default and afford such party a reasonable period in which to cure the default.

## Article XIII - Delays and Limitation of Liability

1. Delays. Under no circumstances shall either University or City ever be liable for any delay in restoring any service or Fibers or any operational aspect of the fiber optic systems containing such Fibers which has been subjected to an outage, interference or interruption, whatever the cause of such outage, interference or interruption, unless due to willful nonfeasance or willful misfeasance of such Party.

2. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. No claims for damages with respect to this Agreement may be made more than five (5) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of this Agreement hereof may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

## Article XIV - Notices

Except as otherwise provided herein, notice under this Agreement shall be deemed sufficient if provided in writing and mailed or delivered as follows:

If to the City: City of Lincoln  
City Clerk  
555 S. 10<sup>th</sup>  
Lincoln, NE 68508

with a copy to: City Attorney's office

If to the University: Manager of Real Estate Properties  
University of Nebraska-Lincoln  
1901 Y Street  
Lincoln, NE 68588

With A copy to: University General Counsel  
University of Nebraska  
3835 Holdrege Street  
Lincoln, NE 68583

Article XV - Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this Agreement shall confer rights or benefits upon any person not a party hereto.

Article XVI - Signatures

The persons signing this Agreement warrant that such persons has the requisite power and authority to enter into, execute and deliver this Agreement.

Article XVII - Miscellaneous Provisions

1. Amendments. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties.

2. Limitation of Benefits. It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

3. Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; provided, however, that if any

such ineffectiveness or unenforceability of any provision of this Agreement, in the good faith judgment of either Party, renders the benefits to such Party of this Agreement as a whole uneconomical in light of the obligations of such Party under this Agreement as a whole, then the University and City shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

4. Independent Contractors. In all matters pertaining to this Agreement, the relationship of University and City shall be that of independent contractors, and none of the parties shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between University and City; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and workers compensation responsibilities.

5. Labor Relations. Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

6. Exercise of Rights. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any, other right, power or privilege.

7. Additional Actions and Documents. Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

8. Headings. Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

9. Incorporation of Exhibits. The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein. Any Attachments to the Exhibits shall also be deemed to be an integral part of the Agreement.

10. Governing Law. This Agreement and each of its provisions shall, be governed by and construed and interpreted according to the substantive laws of the State of Nebraska without regard to its conflicts of law or choice of law provisions.

11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

12. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

13. Force Majeure. Neither party will be liable for the failure to fulfill its obligations under this Agreement if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of Facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither party will be liable for delays caused by the inaction of utilities, local exchange carriers, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the Facilities.

14. Assignment. Neither party shall assign any interest in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the Agreement or Facilities installed or maintained pursuant to this Agreement (whether by assignment or novation), without the prior written consent of the other party.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, University and the City have executed this Agreement as of the date first above written.

ATTEST:

CITY:  
CITY OF LINCOLN,  
A Nebraska municipal corporation

\_\_\_\_\_  
City Clerk

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

[ S E A L ]

ATTEST:

UNIVERSITY:  
THE BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA,  
A Nebraska public body corporate

*Michael J. Kelly*  
\_\_\_\_\_  
Title: *Asst. Vice Chancellor*  
*for Lincoln*

By: *Christine A. Jackson*  
\_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_ Christine A. Jackson  
Vice Chancellor, Business and Finance



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N ANTELOPE PARKWAY

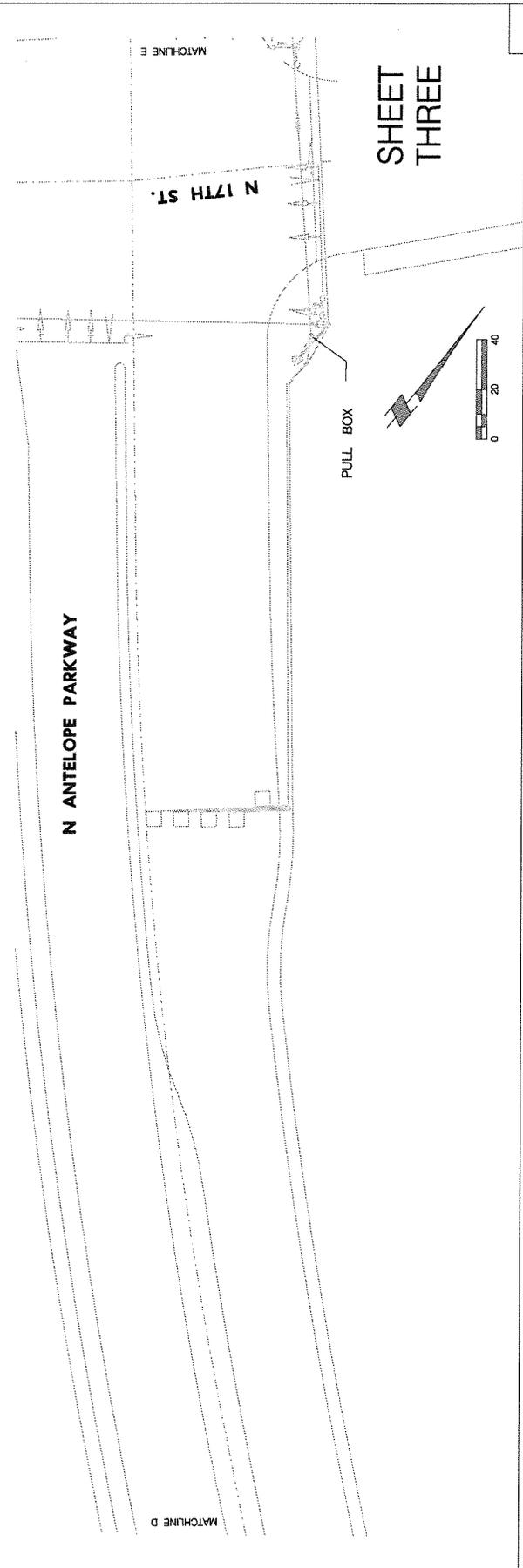
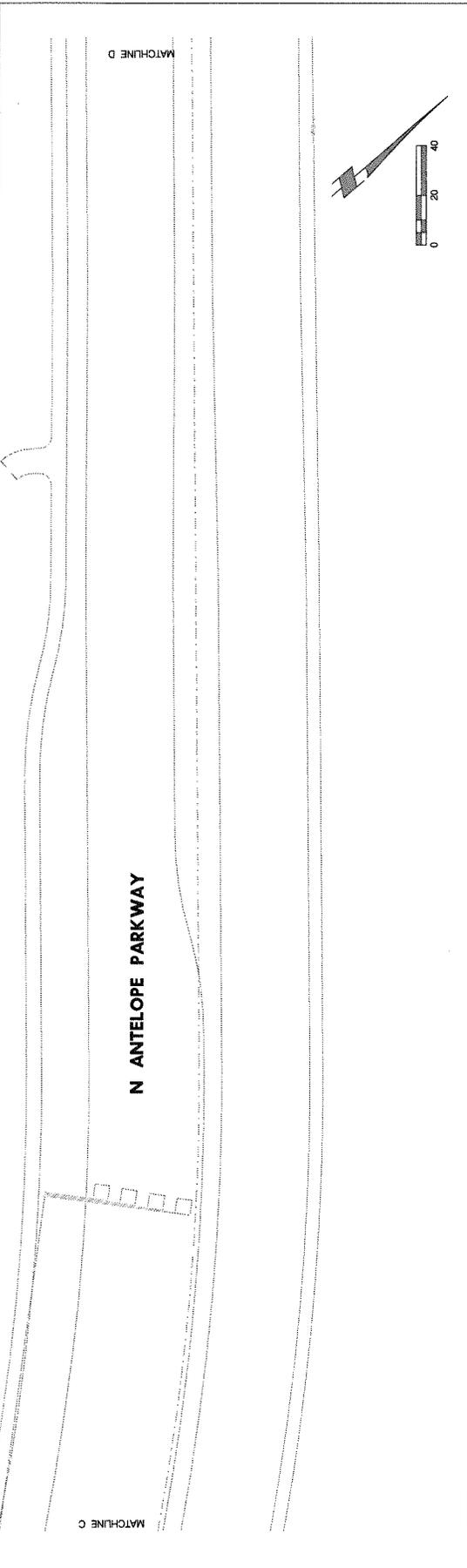
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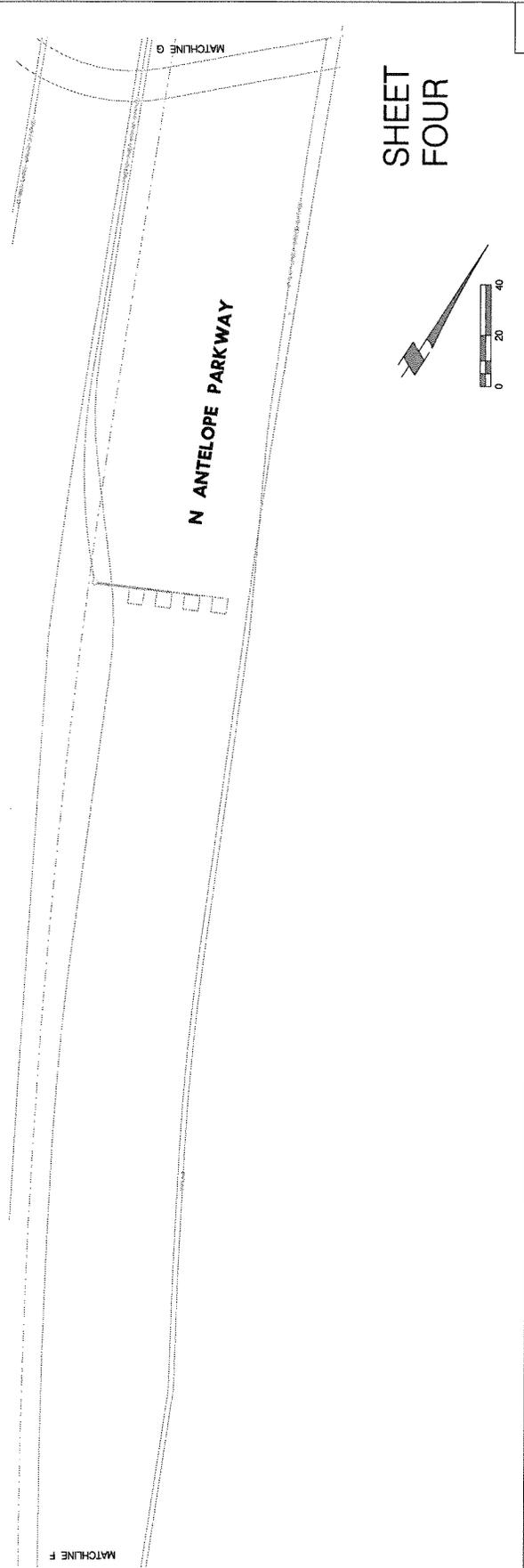
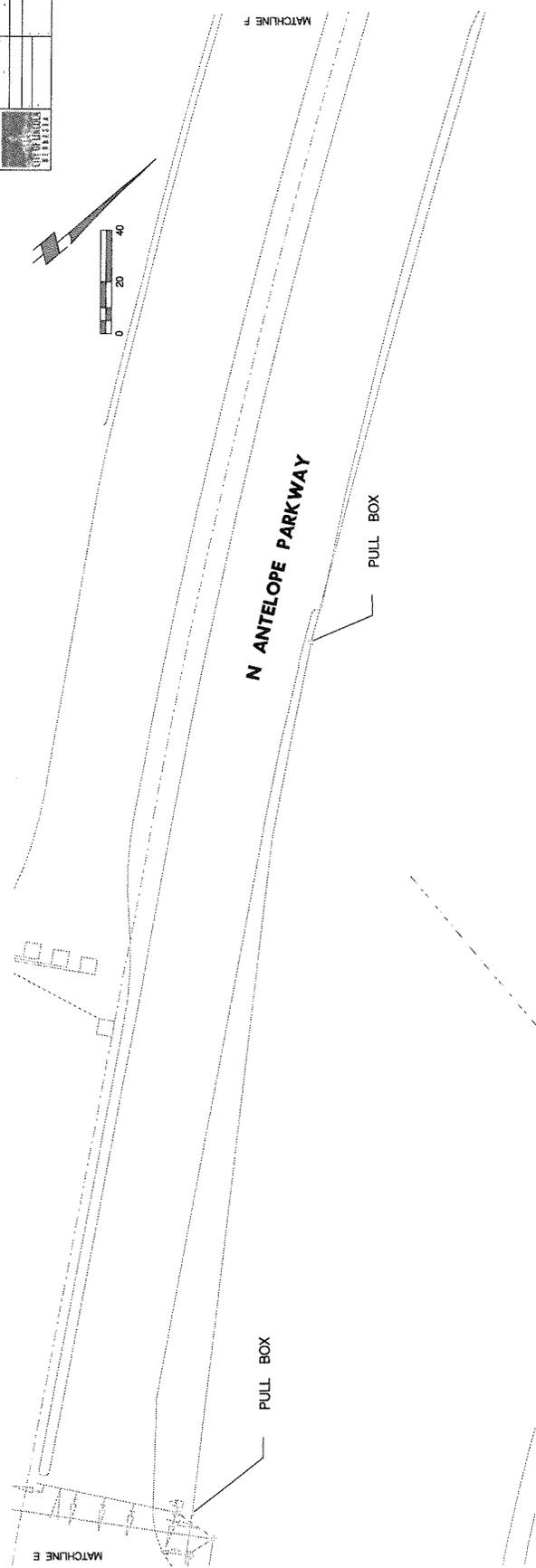
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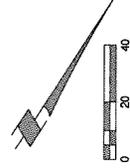
SHEET TWO



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SHEET  
FOUR













## EXHIBIT B

### INSURANCE REQUIREMENTS FOR CITY CONTRACTS

#### 1. GENERAL PROVISIONS

- A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- C. **Occurrence Basis Coverage.** All insurance shall be provided on an **occurrence basis** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements.
- F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

#### 2. INSURANCE REQUIREMENTS

- A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City from the following claims arising out of or resulting from or in connection

with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;

**B. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

| Coverage                          | Min Amt     | Notes          |
|-----------------------------------|-------------|----------------|
| General                           | \$2,000,000 | Aggregate      |
| Products and Completed Operations | \$2,000,000 | Aggregate      |
| Personal and Advertising Injury   | \$1,000,000 |                |
| Each Occurrence                   | \$1,000,000 |                |
| Fire Damage Limit                 | \$ 100,000  | any one fire   |
| Medical Damage Limit              | \$ 10,000   | any one person |

- (2) The required Commercial General Liability Insurance shall also include the following:
  - Coverage for all premises and operations
  - Endorsement to provide the general aggregate per project endorsement
  - Personal and advertising injury included
  - Operations by independent contractors included
  - Contractual liability coverage included
  - X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
  - Any fellow employee exclusions shall be deleted
  - Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
  - Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.

- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.
- (3) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

**C. City included as Insured on Contractor's Policy – Endorsements required.**

The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

**3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE**

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:
- (1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:
- is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and
  - is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.
- (2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against the City, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

- C. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of the City without the express written consent of the City.