

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 16, 2013 AGENDA

Subject:	Type:	Submitted By:
FRANCHISE AGREEMENT AND COMMUNICATIONS CABLE & FACILITIES AGREEMENT BETWEEN CITY OF LA VISTA AND CENTURYLINK	◆ RESOLUTION ◆ ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

SYNOPSIS

An ordinance and resolution have been prepared authorizing the Mayor and City Clerk to enter into a Franchise Agreement and Communications Cable & Facilities Agreements with CenturyLink for the operation of cable services within the City and the use of public rights-of-way within the City limits for installation of communications facilities.

FISCAL IMPACT

An annual rental fee of Two Dollars (\$2.00) per lineal foot for the use and occupancy of the space within the public rights-of-way will be collected. The Occupation Tax as set forth in the City's Master Fee Schedule will be collected.

RECOMMENDATION

Approval

BACKGROUND

Qwest Corporation dba CenturyLink QC has requested permission to install cable in the city limit rights-of-way. An agreement is being presented to allow this.

Qwest Broadband Services, Inc. dba CenturyLink has requested a nonexclusive Cable Franchise Agreement to provide service to the residents of the City. This service will not be available to all residents initially. The service-area will be expanded over time as is stated in the franchise agreement. Franchise fees will be collected according to our Master Fee Ordinance.

Both agreements were negotiated by the City Attorney with direction from the City Administrator and Staff.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA APPROVING A NONEXCLUSIVE CABLE FRANCHISE OF QWEST BROADBAND SERVICES, INC., DBA CENTURYLINK; AUTHORIZING THE EXECUTION OF THE NONEXCLUSIVE FRANCHISE AGREEMENT; AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. The Mayor and City Council of the City find and determine that it is advisable to approve a nonexclusive franchise to Qwest Broadband Services, Inc., dba CenturyLink ("Franchisee") to maintain a cable system and provide cable services to the residents of the City.

SECTION 2. A nonexclusive franchise agreement between the City and Franchisee is attached hereto as Exhibit A and incorporated herein by this reference ("Franchise Agreement"). The City hereby approves the nonexclusive franchise of Franchisee to maintain a cable system and provide cable services to the residents of the City, and the Franchise Agreement between the City and Franchisee is hereby adopted and approved, subject to Franchisee's filing a certificate of franchise with the City Clerk, in form and content satisfactory to the City, and further subject to such ordinances, rules and regulations of the City (including, but not limited to, Chapter 115 of the La Vista Municipal Code) and such other applicable laws, rules and regulations, as in effect or amended from time to time.

SECTION 3. The Mayor and City Clerk of the City of La Vista are hereby authorized to execute the Franchise Agreement and to take such other action as is necessary or appropriate to carry out the actions approved herein.

SECTION 4. This ordinance shall be in full force and effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 16TH DAY OF JULY, 2013.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH QWEST CORPORATION DBA CENTURYLINK QC FOR USE OF PUBLIC RIGHT-OF-WAY WITHIN THE CITY LIMITS FOR INSTALLATION OF COMMUNICATIONS FACILITIES

WHEREAS, the Mayor and City Council find it necessary to have an agreement setting forth conditions for this proposed installation; and

WHEREAS, Qwest Corporation dba CenturyLink QC (Qwest), is registered with the State of Nebraska as a Competitive Local Exchange Carrier; and

WHEREAS, this agreement would entitle Qwest to request permission to use public right-of ways from the City of La Vista; and

WHEREAS, the agreement includes a Statement of Policy and Standard Specifications for Communication Facilities on City Property; and

WHEREAS, the agreement provides for the installation of communications facilities by Qwest subject to certain terms and conditions as set forth in the agreement;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska, that the Mayor and City Clerk are hereby authorized to execute an agreement with Qwest Corporation dba CenturyLink QC for use of public right-of-way within the city limits for installation of communications facilities subject to the final form of agreement being satisfactory to the City Attorney and City Administrator.

PASSED AND APPROVED THIS 16TH DAY OF JULY, 2013

CITY OF LA VISTA

Douglas Kindig
Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

Nonexclusive Cable Franchise Agreement
Between
QWEST BROADBAND SERVICES, INC., d/b/a CenturyLink
And
CITY OF LA VISTA, NEBRASKA

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This Franchise Agreement (the "Franchise" or the "Agreement"), is entered into by and between the City of La Vista, a municipal corporation (the "Franchising Authority" or "City"), Qwest Broadband Services, Inc., d/b/a CenturyLink a Colorado corporation (the "Company"), a wholly owned subsidiary of CenturyLink, Inc., a publicly traded Louisiana corporation, doing business as CenturyLink and having local offices at 1314 Douglas Street, Omaha, Nebraska 68102.

WITNESS THAT:

WHEREAS, the Franchising Authority is a city of the first class located in Sarpy County, Nebraska that owns Rights of Way located within its corporate boundaries. The Company is in the business of providing Cable Services by utilizing facilities at least in part located within public Rights of Way. Qwest Corporation, a Colorado corporation and wholly owned subsidiary of CenturyLink, Inc., ("QC") is in the business of constructing, owning, operating, maintaining, repairing, upgrading and replacing facilities at least in part located in public Rights of Way and constituting Cable Systems used to provide Cable Services; and

WHEREAS, the Company, by transmittal dated January 8, 2013, submitted with the City Clerk of the Franchising Authority an application pursuant to Chapter 115 of the La Vista Municipal Code requesting a cable television franchise to operate and provide Cable Service within the Franchise Area utilizing facilities owned by QC at least in part located within the Right of Way of the Franchising Authority and constituting a Cable System; and

WHEREAS, the Franchising Authority is authorized to grant one or more nonexclusive cable franchises pursuant to La Vista Municipal Code § 115.003 and applicable state and federal law; and

WHEREAS, the Franchising Authority intends to exercise the full scope of its municipal powers to the extent not prohibited by state and federal law, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens within the City of La Vista; and

WHEREAS, the Franchising Authority has determined that the grant of a nonexclusive franchise on the terms and conditions in this Agreement is consistent with the public interest and the health, safety and welfare of the citizens of the City.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

SECTION 1. DEFINITIONS

The following terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended.

"Affiliate" means any Person or entity that directly or indirectly controls or is controlled by or is under common control with a party to this Agreement.

"Applicable Law" means all applicable federal, state and local laws, rules, regulations and other requirements, as adopted or amended from time to time, governing matters set forth in, arising out of or related to this Agreement, including, but not limited to, the Cable Act.

"Basic Service" means the lowest priced tier of service which includes the retransmission of local broadcast television signals, including as a minimum, but not limited to, all must-carry signals and all Governmental Programming Channels.

"Cable Act" means collectively Title VI of the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, each as amended.

"Cable Service" or "Service" means the one-way transmission to Subscribers of (i) video programming, or (ii) other programming services, such as digital audio; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Cable System" or "System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include: (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights of Way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System (other than for the purposes of the Cable Act, 47 U.S.C. § 541(c)) to the extent that such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with the Cable Act, 47 U.S.C. §573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

"Channel" shall be defined herein as it is defined under the Cable Act, 47 U.S.C. § 522(4),

meaning a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

"City" means the City of La Vista, Nebraska.

"City Code" means the La Vista Municipal Code and all other applicable laws, rules, regulations and requirements of the City, as enacted or amended from time to time.

"City Council" means the city council of the City.

"Company" means Qwest Broadband Services, Inc. as identified at the beginning of this Agreement, and its lawful and permitted successors, assigns and transferees.

"Control" or **"Controlling Interest"** means, except to the extent otherwise defined elsewhere in this Agreement, actual working control in whatever manner exercised.

"Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all signals included in the Service delivered at designated Converter dial locations.

"Day" unless otherwise specified shall mean a calendar day.

"Effective Date" means the last date that this Agreement is executed by the parties.

"Expanded Basic Service" refers to the next tier of Service above the Basic Service tier excluding premium or Pay Television services.

"FCC" means the Federal Communications Commission, its designee, or any successor thereto.

"Franchise Area" means the incorporated limits of the City of La Vista, Nebraska, as constituted from time to time during this Agreement.

"Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the Franchising Authority on Company or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is unduly discriminatory

against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Company for Governmental Programming access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17. Franchise Fee as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 542.

"Franchising Authority" means the City of La Vista, Nebraska, or its successor, or any official, officer, employee, agent, board, bureau, authority, agency, commission, or department specifically designated or authorized by the Franchising Authority to act on its behalf with respect to one or more specified matters under this Agreement.

"Governmental Programming Channels" means those channels designated by the Company to provide Governmental Programming.

"Governmental Programming" means such information, data, messages, broadcasts and public meetings of the Franchising Authority and such other political subdivisions of the State of Nebraska or other governmental unit, or any committee, body or agency thereof, and any other civic, public, educational or governmental programming, as authorized from time to time by the Franchising Authority or its designee.

"Gross Revenues" shall mean all revenue derived by the Company and any Affiliate, subsidiary, parent, or any Person in which the Company has a financial interest, from or in any way related to the operation of the Cable System to provide Cable Service pursuant to this Agreement. Provided, "Gross Revenues" shall include, but not be limited to:

- (1) revenue derived from any tier of Cable Service;
- (2) revenue derived from optional premium Cable Services;
- (3) revenue derived from Pay Television Cable Service;
- (4) revenue derived from Installation, disconnection, reconnection and changes-in-Service;
- (5) late fees;
- (6) Franchise Fees;
- (7) revenue derived from leased Channel fees for commercial leased access programming and

services;

- (8) Converter rentals;
- (9) studio rental, production equipment and personnel fees;
- (10) advertising revenues from the provision of Cable Services over the Cable System;
- (11) revenues from program guides and electronic guides;
- (12) revenues from home shopping, and other revenue-sharing arrangements;
- (13) additional outlet fees;
- (14) all revenues derived from any ancillary services related to the provision of Cable Service pursuant to this Franchise (the parties agree that ancillary services do not include "telecommunications" services or "information" services as those terms are defined by federal law); and
- (15) revenue received by any entity other than the Company where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.

Provided, further, that "Gross Revenues" shall not include:

- (i) bad debt;
- (ii) any taxes on services furnished by the Company which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Company on behalf of said governmental unit. The Franchise Fee is not such a tax; or
- (iii) revenue from or fees for any services other than Cable Services or from services that are not provided to Subscribers via the Cable System.
- (iv) The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing Applicable Law. If there is a change in federal law subsequent to the Effective Date of this Agreement, such change shall not impact this Gross Revenues definition except to the extent the change specifically preempts the affected portion of the definition above.

"**Installation**," unless otherwise provided herein, shall mean the connection of the Cable System from a feeder cable to a residence, place of business or other Customer building.

"Living Unit" means a distinct address within the Franchise Area, other than those addresses which are subject to an agreement that, by its terms, prevents Company from providing Cable Service to such address ("the Qwest Corporation (QC) network inventory system"). This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

"Normal Business Hours" means, at a minimum, 9 a.m. to 5 p.m., Monday through Friday, and 9 a.m. to 1 p.m. on Saturday, unless otherwise agreed by Company and Franchising Authority.

"Normal Operating Conditions" means those service conditions which are within the control of Company. Those conditions which are not within the control of Company include, but are not limited to, natural disasters, civil disturbances, employee strikes by the Company's collectively bargained employees, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the facilities used to provide Cable Services.

"Pay Television" means the delivery over the Cable System of pay-per-Channel or pay-per-program Cable Service to Subscribers for a fee or charge, in addition to the charge for Basic Service or other programming services that a cable operator makes available to all Subscribers generally.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

"QC" means Qwest Corporation, an Affiliate of Company, and Qwest Corporation's lawful and permitted successors, assigns and transferees.

"Remote Terminal" means a Digital Subscriber Line Access Multiplexer (DSLAM) capable of offering Cable Services to Subscribers.

"Right of Way" means "Street", "Public Right of Way" or "Right of Way" defined elsewhere in this Agreement.

"Street", "Public Right of Way" or "Right of Way" means the surface of, and the space above and below, any dedicated public street, highway, freeway, bridge, alley, court, boulevard, sidewalk, parking, parkway, way, lane, public way, drive, circle, or other dedicated public right of way in the Franchise Area, including, but not limited to, easements within the Franchise Area which have been dedicated for

compatible uses; but shall not include any property of the Franchising Authority which is not a dedicated public right of way, street, highway or alley.

"Subscriber" or "Customer" means any Person, public building or governmental entity within the Franchise Area that is authorized to receive Cable Service provided by Company; provided, however, that Company recognizes the right and ability of any authorized lessee or tenant of a Subscriber to request the fulfillment of certain Customer service obligations of Company set forth herein.

"Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2. GRANT OF AUTHORITY

2.1 Grant of Franchise. Subject to the terms and conditions of this Franchise Agreement, the charter of the Franchising Authority and Applicable Law, the Franchising Authority hereby grants to the Company a nonexclusive franchise which authorizes the Company to utilize facilities erected, constructed, installed and maintained by QC in, along, upon, across, above, over or under the Public Rights of Way within the Franchise Area and all extensions thereof and additions thereto, including such poles, wires, cables, conductors, ducts, underground conduits, vaults, manholes, and other fixtures and other facilities for the provision of Cable Services by Company in the Franchise Area. Not in limitation of the foregoing, use of Right of Way for the Cable System and Cable Service shall be nonexclusive and subject to applicable requirements of the City Code or other ordinances, regulations, policies, procedures or rules governing permitted use of Right of Way.

2.2 Absent a change in Applicable Law following the Effective Date of this Agreement, the Company (1) acknowledges and accepts the Franchising Authority's legal right to issue and enforce the Franchise and this Agreement; (2) accepts and agrees to comply with each and every provision of this Agreement; (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary; and (4) agrees not to challenge or attempt to challenge in any claim or proceeding any condition or term of this Agreement or otherwise contend the same to be unreasonable, arbitrary or void or that the Franchising Authority was without power or authority to make such term or condition. The Company accepts and will accept the validity of the terms and conditions of local law as it exists and may be amended from time to time throughout the term of its Franchise, provided, however, that any such amendments of local law that are solely applicable to cable service franchises or cable systems and completely discretionary rather than made to reflect changes to federal or state laws, rules or regulations, shall not conflict with the terms of this Franchise;

provided, however, that nothing set forth in the foregoing provisions of this Section 2.2 shall prevent or prohibit the Franchising Authority or Company from receiving the benefit of mandated rights subsequently enacted under federal or state law which expressly preempt any of the terms, provisions and/or obligations hereunder. In the event any such rights are subsequently enacted under federal or state law, the Company agrees that this Agreement at the option of the Franchising Authority shall be subject to renegotiation.

2.3 This Agreement and the Franchise granted hereunder shall constitute both a right and an obligation to provide Cable Services as set forth herein. The Company's authority under this Agreement is subject to and must be exercised in strict accordance with the provisions of the City Code.

2.4 This Franchise does not authorize the provision of any service other than Cable Services or in any way relieve the Company of any obligation to obtain any authorizations, licenses, permits or franchises now or hereafter required to use the Rights of Way in the Franchise Area to provide Cable Services or other services. The provisions of this Agreement are not a bar to the imposition of similar, different or additional conditions with respect to the use of the Rights of Way in the Franchise Area in connection with the provision of Cable Services or services other than Cable Services provided such conditions are materially consistent with the conditions imposed on similarly situated Right of Way users other than the Omaha Public Power District and the Metropolitan Utilities District. Nothing herein shall be read to prevent Company from providing other non-cable services to the extent consistent with Applicable Law.

2.5 The Company promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate or subcontractor of the Company directly involved in the offering of Cable Service in the Franchise Area or directly involved in the management or operation of Cable System in the Franchise Area, will comply with the obligations of this Franchise. The parties acknowledge that QC will obtain all necessary permits and be responsible for the construction, installation, maintenance, repair, replacement, upgrade, removal and operation of the facilities in the public Rights of Way, which will be utilized by the Company to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Agreement governing delivery of Cable Services. The parties also acknowledge that if and when QC does provide Cable Services to Subscribers, QC will need to obtain a separate cable franchise from the Franchising Authority. To the extent the Company at any time owns, constructs or installs any facilities in the public Rights of Way, Company in accordance with Applicable Law will obtain all necessary permits and be responsible for said ownership, construction, operation or

work.

2.6 No Rights of Way shall be used by Company if the Franchising Authority determines that such use is inconsistent with the terms, conditions or provisions by which such Rights of Way were created or dedicated, or are presently used, or the City Code.

2.7 No rights shall pass to the Company by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:

(A) Any other permit or authorization generally required under the City Code for the privilege of transacting and carrying on a business within the Franchise Area that may be required by the Franchising Authority; or

(B) Any permits or agreements for occupying any property of the Franchising Authority or private entities to which access is not specifically granted by this Agreement including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the Franchising Authority or another Person or entity.

2.8 The Franchise granted by this Agreement shall be nonexclusive. The Franchising Authority specifically reserves the right to grant, at any time, such additional franchises for a Cable Service or Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Company.

2.9 Term of Franchise. This Franchise shall expire ten (10) years from the Effective Date of this Agreement, unless sooner renewed or lawfully terminated in accordance with the terms hereunder and Applicable Law; subject, however, to the option of the City at any time during the initial ten (10) year term to extend said term beyond ten (10) years for up to an additional ten (10) years, upon written acceptance of such extension by the Company.

2.10 Renewal. Subject to the Cable Act, 47 U.S.C. § 546, the Franchising Authority reserves the right to grant or deny renewal of the Franchise.

2.11 Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority's right to require the Company, QC or any Person utilizing the Cable System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights

of the Franchising Authority in and to the Streets.

SECTION 3. AREA TO BE SERVED

3.1 The Company is hereby authorized to provide Cable Services over a Cable System within the jurisdictional boundaries of the Franchise Area, including any areas annexed by the Franchising Authority during the term of this Franchise. The parties acknowledge that Company is not the first entrant into the wireline video market in the Franchise Area. The Franchising Authority acknowledges the Company's position that as a new entrant, investment in and expansion of the Cable Service or Cable System should be driven by market success, and not a contractual requirement for initial ubiquitous coverage, except as otherwise provided in Section 3.1.2, below. The Company acknowledges the Franchising Authority desires wireline competition throughout the entire Franchise Area so all residents may receive the benefits of competitive Cable Services.

3.1.1 Initial Service Coverage. To demonstrate its commitment to provide Cable Service to the Franchise Area, Company agrees that within three (3) years from the Effective Date of this Franchise, Company shall offer Cable Services over a Cable System to at least twenty-five percent (25%) of the Living Units in the City. Company shall not be obligated under this Franchise to expand the provision of Cable Service beyond the Initial Coverage Threshold until twenty-seven and one half percent (27.5%) of the Living Units in the Initial Coverage Threshold purchase Cable Services from Company ("Initial Subscription Threshold"). If, on the third anniversary of the grant of this Franchise, Company's Cable Service offering exceeds the Initial Coverage Threshold, then the Initial Subscriber Threshold shall apply to all Living Units offered Cable Service by Company, not just the Initial Coverage Threshold.

3.1.2 Expansion of Service Coverage. Once the Company achieves the Initial Subscription Threshold, Company agrees that within two (2) years from that date, Company shall offer Cable Services to an additional fifteen percent (15%) of the Living Units in the City ("Additional Coverage Threshold"). Company shall not be obligated under this Franchise to expand Company's Cable Service offering beyond the Additional Coverage Threshold until twenty-seven and one half percent (27.5%) of the Living Units offered Cable Service by Company in the Additional Coverage Threshold purchase Cable Services from Company ("Additional Subscription Threshold"). If Company's Cable Service offering exceeds the Additional Coverage Threshold prior to the meeting the Additional Subscription Threshold, then the Additional Subscription Threshold shall apply to all Living Units offered Cable Service by Company in the Franchise Area, not just the Additional Coverage Threshold. Thereafter, this process of increasing the Additional Coverage Threshold by fifteen percent (15%) when the prior Subscription Threshold is met will

be continued every two (2) years until Company is capable of offering Cable Services to all Living Units in the Franchise Area.

3.1.3 Meetings to Review Deployment of Cable Services. Notwithstanding Section 9.3, below, at the request of the City, Company will meet with appropriate representatives of the City to review maps and/or other data points relating to the provisions of Sections 3.1.1 and 3.1.2 above and Company shall preserve all such maps or other information relating to Sections 3.1.1 and 3.1.2 during the term of this Agreement and any extension hereof.

3.2 In General. Except as otherwise provided herein, where Company chooses to activate a Remote Terminal capable of providing Cable Service, the Company shall provide Cable Service within seven (7) Days of a request by any Person within four thousand (4,000) cable feet of an activated Remote Terminal. For purposes of this subsection, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Company, receipt of a written request by Company or receipt by Company of a verified verbal request. Company shall provide such service at non-discriminatory monthly rates for residential Subscribers, consistent with Applicable Law. Company shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance and consistent with 47 U.S.C. Section 541(a)(3), or based upon any factor listed in Section 6.2 of this Agreement.

3.3 The Company shall offer the individual units of a multiple dwelling unit all Cable Services offered to other Living Units in the Franchise Area and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Company having legal access to said unit. The Franchising Authority acknowledges that the Company cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit.

3.4 The Cable System shall be interconnected with other contiguous Cable Systems that are owned and operated by Company, QC or an Affiliate of either, provided that such Cable Systems are served by the headend located in the Omaha metropolitan area.

3.5 After the City has launched a public, educational or government access channel under the terms of this Franchise, Company shall, in accordance with this subsection, interconnect the Governmental Programming Channels of the Cable System with any other contiguous cable system not owned or operated by Company or an Affiliate, upon the directive of the Franchising Authority. Interconnection of Channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. In the alternative, Company may provide a direct fiber feed to Governmental Programming origination facilities in

order to provide any designated access provider with Governmental Programming origination capabilities. The Franchising Authority shall not direct interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to Subscribers. Company shall not be required to interconnect with the other cable system operators unless the operator of such cable system is willing to do so and pays for its own cost of constructing and maintaining the interconnect up to the demarcation point.

3.6 Company shall only be required to interconnect Governmental Programming Channels with an overbuilder in the Franchise Area in the event that the City has launched a public, educational or government access channel and the Franchising Authority determines in its sole discretion that it would be economically burdensome to its Subscribers to construct and maintain return lines directly from the origination point(s) of the Governmental Programming Channel(s) versus interconnecting with the Company. In the event Company receives a directive from the Franchising Authority to interconnect with an overbuilder, it shall immediately initiate negotiations with the other affected cable system or Systems and shall report to the Franchising Authority the results of such negotiations no later than sixty (60) Days after such initiation. If the parties cannot reach an agreement on the terms of the interconnect, including compensation and timing, the dispute shall be submitted to the Franchising Authority for determination and resolution. Additionally, Company shall only be required to interconnect with an overbuilder if the overbuilder is providing similar support for Governmental Programming as required pursuant to this Franchise.

SECTION 4. THE CABLE SYSTEM

4.1 The Cable System and Its Operations

4.1.1 General Obligation. The Company shall operate and maintain Cable Services providing a minimum of one hundred (100) Channels of Cable Service to Subscribers in the Franchise Area in a manner consistent with Applicable Law, FCC technical standards, and the requirements of this Agreement. Upon request of the City from time to time, Company shall file or cause to be filed with the City a map of the exact location and description of all components of the Cable System located in Rights of Way.

4.1.2 Mandatory Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Company are honored. In the event that QC or Company elects to overbuild, rebuild, modify, Transfer (as defined in Section 10 of this Agreement) or sell the Cable System or Franchise, or Company gives the Franchising Authority notice of intent to terminate or fails to renew its Franchise, the Company shall act so as to insure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. In the event of a change of Company, or in the

event a new operator acquires the Cable System or Franchise, the Company shall cooperate with the Franchising Authority, new franchisee or operator in maintaining continuity of Cable Service to all Subscribers.

In the event Company fails to provide Cable Service for seven (7) consecutive Days without prior approval of the City or without just cause, the City may, at its option, provide Cable Service or designate an operator until such time as Company restores Service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Company, the Company shall reimburse the City for all reasonable costs or damages in excess of revenues from the Cable Service or Cable System received by the City that are the result of the Company's failure to perform. The City shall also be entitled to its payment of the Franchise Fee during that period.

4.1.3 Service or Line Extension. The Company shall provide Cable Service to all Living Units within the Franchise Area provided that such Living Units are within 4,000 cable feet of an activated Remote Terminal at no additional cost to the Subscriber. The Company may enter into any agreement with developers, property owners, or residents to serve areas not required to be served, provided that such Agreement shall be consistent with the terms of this Franchise.

4.1.6 Technical Performance. Throughout the term of this Franchise, Company shall ensure the Cable System is operated, maintained and upgraded in accordance with the testing procedures and the technical performance standards of the FCC in effect from time to time to provide similar technical capabilities, capacity, performance and functionality for the provision of Cable Services as other similarly situated cable systems operated by Company or any Affiliate in the United States, and shall provide to Franchising Authority upon request, a written report of the results of any testing of the Cable System or Cable Services, including annual proof of performance and cumulative leakage index tests conducted pursuant to FCC standards and requirements. Company shall at all times maintain a skilled workforce trained to perform all obligations under this Agreement.

4.2 Requirements With Respect to Work on the Cable System. This Franchise and all requirements and work involved in the construction, installation, operation, maintenance, repair, upgrade, removal, relocation or use, of the Cable System to provide Cable Service shall be subject to Applicable Law as modified from time to time. Notwithstanding anything in this Agreement to the contrary, the Franchising Authority from time to time may cut, remove, move, relocate, disconnect or render inoperable, or cause the cutting, removal, movement, relocation, disconnection or rendering inoperable of, facilities including the Cable System in case of emergency or other situations not prohibited by Applicable Law. Company's rights under this

Agreement with respect to use of Right of Way to provide Cable Service shall be subject to Applicable Law, and Franchising Authority shall not incur any liability to the Company or any other Person arising out of or relating to any act or omission of City in accordance with Applicable Law. When possible, the City shall provide notification prior to any cutting or movement of Cable System wires.

4.3 Maps and Plats

4.3.1 Company's Obligation. The Company shall make available for inspection by the Franchising Authority true and accurate maps or plats of all existing and proposed installations to provide Cable Services and update the same at reasonable intervals so that the Franchising Authority will have access to current set of such maps and plats.

4.3.2 Franchising Authority's Obligation. The Franchising Authority shall provide, upon request from the Company, the boundaries from time to time of the Franchise Area.

4.4 Service to Public Buildings.

4.4.1 If and when any one or more of the below described buildings are within four thousand cable (4,000) feet of an activated Remote Terminal and the Designated Representative selects Company as the exclusive provider of Cable Services for such building, the Company shall provide free of charge and not subject to offset against the Franchise Fee, throughout the term of this Agreement, one (1) service drop, two (2) outlets and two (2) Converter units if necessary, and Basic Service and Expanded Basic Service (i.e. together the equivalent of sixty (60) or more Channels of programming) or the future equivalent of such service tiers offered by Company in the Franchise Area ("Complimentary Service"), to any public facilities located in the Franchise Area including but not limited to: City Hall; all public fire stations and police stations; all public libraries; all Governmental Programming access facilities designated by the Franchising Authority; all City and County administrative and operational buildings; all public and private accredited K-12 schools located in the Franchise Area ("Public Buildings"). Each separate unit of a jointly owned public facility shall constitute a separate Public Building for purposes of this 4.4.1 to the extent technically feasible to provide Complimentary Service to each separate unit of a jointly owned public facility.

4.4.2 For purposes of this Section 4.4, the term "Designated Representative" shall include anyone designated by the local governing body responsible for the Public Building in question. The Designated Representative may request Complimentary Service to Public Buildings which shall be made in writing. Company shall be responsible for all costs of extension for any installation which is less than

four thousand (4,000) cable feet from the Company's activated Remote Terminal. The Public Building shall pay any net additional drop or extension Installation Costs in excess of four thousand (4,000) cable feet. For purposes of this Section 4.4, "Installation Costs" shall include only the Company's documented cost of: (1) necessary materials, equipment and hardware to complete the installation; and (2) required labor charged at Company's lowest hourly service charge taking into account the classification and skill level of employee(s) needed to perform. The recipient of the Complimentary Install will secure any necessary right of entry.

4.4.3 Notwithstanding anything to the contrary set forth in this Section 4.4, Company and the Franchising Authority agree that Company shall not be required to honor a Complimentary Service request to any Public Building unless it is technically feasible.

4.4.4 Nothing in this Section 4.4 is intended to prevent a separate written agreement between any entity receiving Cable Services under the terms hereof and the Company regarding the subject matter hereof. To that end, in the event a separate written agreement with any such entity is negotiated and agreed upon, the Company shall give notice thereof to the Franchising Authority and advise therein as to the provisions of this Franchise which are no longer applicable to such entity. In no event, however, shall the Company be relieved of its obligations to meet the requirements of this Section 4.4 should such a written agreement fail to materialize, be terminated, or expire during the term of this Franchise.

4.4.5 The Franchising Authority acknowledges and agrees the Company shall have no obligation to provide Complimentary Service to any private Person or entity which is leasing space in a Public Building.

4.5 Parental Control. The Company shall provide adequate security provisions in its Subscriber equipment to permit parental control over the use of Cable Services on the System consistent with federal law.

4.6 Emergency Alert System. The Company shall install and maintain an Emergency Alert System that meets all requirements of federal law.

4.7 No Liability to Company. Neither the Franchising Authority nor its officers, officials, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Company as a result of or in connection with the protection, movement, removal, alteration, or relocation of any part of the Cable System or resulting impact to the Cable Service by or on behalf of the Company, QC or the Franchising Authority in connection with any emergency, public work, public improvement, alteration of any municipal structure, or any change in the grade or line of any Street.

SECTION 5. GOVERNMENTAL ACCESS

5.1 Subject to any modifications determined necessary or appropriate in a written amendment signed by both parties, the Company, as soon as reasonably practicable and not later than one hundred eighty (180) Days after written notice is provided by City to Company , shall comply with the requirements of Exhibit A governing Governmental Programming access and Governmental Programming in the Franchise Area. Exhibit A is incorporated herein by this reference.

SECTION 6. FEES AND CHARGES

6.1 Rates, Fees and Charges. Before any new or modified rate, fee, charge, deposit or associated term or condition for Cable Service may be imposed, the Company must provide notice to the Franchising Authority of the change and notify affected Subscribers, as required by Applicable Law. Submission of a Company rate card which reflects all current rates, fees, charges, deposits and associated terms and conditions will satisfy the requirements of this Section 6.1.

6.2 Prohibition Against Discrimination in Charges to Residential Subscribers. The Company shall not discriminate between or among any residential Subscribers in the rates, terms or conditions for any Cable Service; provided that the foregoing requirement shall not prevent (to the extent otherwise permitted by Applicable Law) the use of (i) short-term sales promotions and other short-term discounts or reduced charges; (ii) reasonable discounts or reduced charges to senior citizens or economically disadvantaged groups; or (iii) bulk rate arrangements. Nothing in this section shall be construed to prevent the Company from individually negotiating the rates, terms and conditions of Cable Service provided to nonresidential Customers. Notwithstanding the foregoing, Company shall not deny Service, deny access or otherwise discriminate on rates or any other terms or conditions of Cable Services (or any related service provided by Company) on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, familial status, marital status, income level, neighborhood of residence, demographics, status with regard to public assistance or location within the Franchise Area; and Company shall comply with nondiscrimination requirements of Applicable Law.

6.3 Franchising Authority's Regulation of Fees and Charges. The Franchising Authority reserves the right to regulate the Company, the Cable System and the rates, fees, charges, deposits and associated terms and conditions for Cable Service (or for related equipment or services such as equipment rental, deposits and downgrade fees) provided pursuant to this Agreement to the fullest extent permitted by Applicable Law, as amended from time to time, and the Franchising Authority may, in connection with any such regulation, establish rules and regulations from time to time to the extent permitted by such Applicable

Law. In connection with such regulation, the Franchising Authority shall comply with FCC rules or regulations as amended from time to time and provide the public with an opportunity to comment.

6.4 Bundled Services. If Company offers Subscribers a price discount if they obtain a bundle of Cable Service and one or more non-Cable Service goods or services at a single discounted price, then beginning on the Effective date of this Agreement for the purpose of computing Gross Revenues, the discount shall be allocated equally to each service or good included in the bundle.

SECTION 7. CUSTOMER SERVICE

In addition to any other customer service requirement set forth in this Agreement, Company shall meet all customer service standards attached hereto as Exhibit B, consistent with Applicable Law. Exhibit B is incorporated herein by this reference.

SECTION 8. COMPENSATION AND OTHER PAYMENTS

8.1 Compensation to the Franchising Authority. As compensation for the use of the Public Rights of Way to provide Cable Services, the Company shall pay to the Franchising Authority the amounts set forth in this Section 8.

8.1.1 Franchise Fees for Cable Service. During the term of this Franchise, the Company shall pay to the Franchising Authority a Franchise Fee in an amount equal to five percent (5%) of Company's Gross Revenues. The five percent (5%) Franchise Fee includes compensation for Right of Way use for the Cable Service and Cable System. For purposes of the Franchise Fee to be paid by Company under this Agreement, in the case of Cable Service that may be bundled or integrated functionally with other services, capabilities, or applications of Company, the fee shall be applied only to the Gross Revenues attributable to Company's Cable Service as reflected on the books and records of Company kept in the regular course of business in accordance with Generally Accepted Accounting Principles and Applicable Law.

8.1.2 Franchise Fees – Change in Rate. Upon ninety (90) Days advance written notice from Franchising Authority to Company, the Franchising Authority may increase or decrease the Franchise Fee to the extent permissible under Applicable Law, and pursuant to said notice and direction, Company shall pay to the Franchising Authority an annual Franchise Fee of up to the maximum amount permitted by Applicable Law. At any time during the duration of this Franchise, in the event that the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the City may unilaterally amend this Franchise after holding a public hearing to provide that such excess amount shall be added to

the Franchise Fee payments to be paid by Company to the City hereunder, provided that Company has received at least ninety (90) Days prior written notice from the City of such amendment and that all other providers of cable services in the Franchise Area are subject to the same increase in Franchise Fees.

8.1.3 Franchise Fees – Payment. All such payments of Franchise Fees shall be made on a quarterly basis, not later than forty-five (45) Days after the last Day of each calendar quarter, and shall be remitted simultaneously with a report setting forth the Gross Revenues for the period ending on said last Day. Unless otherwise directed by the City Administrator or the City Administrator's designee, the Company shall provide such information using the form attached hereto and incorporated by reference as Exhibit C. The Company, within 120 days after the conclusion of each fiscal year of the Company, also shall file an annual financial report including yearly total Gross Revenues, payments to the City and all relevant financial information. Each report shall be verified as accurate by the proper financial officer of the Company and shall conform to Generally Accepted Accounting Principles applied on a consistent and fair basis. Any amount not paid when due hereunder shall accrue interest at the rate of ten percent (10%) per annum, compounded monthly.

8.1.4 Franchise Fee Payments Subject to Audit. No acceptance of any Franchise Fee payment by the Franchising Authority shall be construed as an accord and satisfaction of any claim the City may have for further or additional sums payable hereunder or for any performance or obligation of the Company. The City shall have the right to inspect relevant records of the Company and its Affiliates to determine whether the Franchise Fee was paid accurately, and the right to audit and recompute any amounts payable thereto; provided that such audit shall commence within sixty (60) months following the close of each fiscal year of the Company. In the event the City determines that additional amounts are due, the Company shall pay said amount within thirty (30) Days following written notice from the City; provided that the Company may pay said amount under protest with the right to recompute the same.

8.2 Continuing Obligation. In the event the Company continues to operate all or any part of the Cable Service after the term of this Franchise, the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall be, for a period not to exceed ninety (90) Days thereafter and in no way be construed as a renewal or other extension of this Agreement or the Franchise.

8.3 Other Payments. The Franchise Fees provided under this Section 8 are in addition to any other amounts that may be due the Franchising Authority by Company from time to time, including, but

not limited to taxes and permit fees. In addition, the Company shall pay all reasonable incidental costs related to the renewal of this Franchise incurred by the Franchising Authority for which reimbursement is allowed pursuant to federal law and the FCC. Payment of said costs shall be made within thirty (30) Days following written notice from the Franchising Authority to the Company.

SECTION 9. OVERSIGHT AND REGULATION

9.1 Franchising Authority's Right of Oversight. The Franchising Authority shall have the right to oversee, regulate, and periodically inspect the operation, maintenance and upgrade of the Cable System, as permitted or as necessary to ensure compliance with the provisions of this Agreement.

9.2 Reports. At the request of the Franchising Authority, the Company shall promptly submit to the Franchising Authority such reasonable information as the Franchising Authority may request regarding compliance with any term or condition of this Agreement.

9.3 Meetings. During the term of this Agreement, and upon ten (10) Days prior written notice, Company agrees to meet with representatives of the Franchising Authority from time to time as requested by the Franchising Authority and not more than quarterly. Topics at such meeting shall include, but shall not be limited to, an evaluation of Company's compliance with any term or provision of this Agreement, including without limitation Sections 3 and 4. Prior to and during such evaluations, Company shall fully cooperate with the Franchising Authority and provide such information and documents as from time to time requested by the Franchising Authority.

9.4 Company To Maintain Books, Records and Files

9.4.1 Books and Records. Throughout the term of this Agreement, Company shall maintain complete and accurate books of account, maps and records with respect to the Cable Services and performance under this Agreement. All books, maps and records in the possession or control of the Company that are necessary or appropriate to verify compliance with this Agreement shall be made available to the City or its representatives at a location within the City or at a different location mutually agreed by the parties that is in the Omaha metropolitan area in which the Franchise Area is located. To the extent it is necessary for the City to send representatives to a location located more than twenty (20) miles from La Vista City Hall to inspect Company's books, maps or records, Company shall be responsible for all reasonable travel costs incurred by City representatives. All records pertaining to financial matters which may be the subject of an audit by the Franchising Authority shall be retained by the Company for a minimum of five (5) years following the close of each fiscal year of the Company.

Upon request by the Franchising Authority, the Company agrees to provide either a list of all shareholders holding ten percent (10%) or more of its outstanding shares or a chart or similar document stating its ownership structure that includes the ultimate parent company. Upon request, the Company shall provide the Franchising Authority with copies of reports related to the provision of Cable Service that it files with any government agency

9.4.2 File for Public Inspection. Throughout the term of this Franchise, the Company shall maintain, in a file available for public inspection during Normal Business Hours at the Company's headend located in the Omaha metropolitan area, those documents required pursuant to the FCC's rules and regulations.

9.4.3 Subject to the privacy provisions of 47 U.S.C. § 521 et seq., Company shall prepare and maintain written records of all written complaints made to it relating to the provision of Cable Service in the City and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Company and made available to the Franchising Authority upon request. The Company shall, upon request of the Franchising Authority, annually furnish the Franchising Authority with: (i) a report showing the number of Basic Service tier Subscribers; and (ii) a summary of how the Company resolved all written complaints forwarded to it by the Franchising Authority from Subscribers concerning the operation of the Cable System or Service. The Franchising Authority agrees that it shall use its best efforts to keep any such reports generated by the Company as confidential, except as necessary or appropriate to exercise and its right under this Agreement.

9.5 Franchising Authority's Rights of Inspection and Audit

9.5.1 Right of Inspection. During Normal Business Hours and upon reasonable notice to the Company, the Franchising Authority or its designated representatives may inspect and examine any aspect of the Cable Service, including without limitation, facilities and equipment thereof, as necessary or appropriate to ensure compliance with this Agreement.

9.5.2 Franchising Authority May Conduct Compliance Audit and Hearings. To the extent permitted by law, the Franchising Authority may conduct a compliance audit and hold public hearings as provided by the City Code.

9.6 Liquidated Damages.

9.6.1 Subject to the provision of written notice by the Franchising Authority to the Company and a reasonable opportunity to cure, liquidated damages shall be paid by the Company immediately upon demand by the City, and if not so paid, shall be paid by the surety under the performance bond required by Section 11

of this Agreement for the following breaches:

(A) For failure to maintain or provide records or reports as specified by the Franchising Authority or this Agreement, Company shall pay to Franchising Authority, One Hundred Dollars (\$100) per Day.

(B) For the failure to provide Cable Service to Subscribers as required herein, Company shall pay to the Franchising Authority Two Hundred and Fifty Dollars (\$250) per Day.

(C) For failure to restore the performance bond as required within thirty (30) Days, the entire remaining amount of the performance bond, if any, shall be forfeited and paid to City.

(D) For failure to comply with build-out obligations, set forth in Section 3 of this Agreement, Company shall pay to the Franchising Authority Three Hundred Dollars (\$300) per Day for each Day or part thereof that such noncompliance continues.

(E) For failure to meet Customer Service requirements for two consecutive calendar quarters, Company shall pay to the Franchising Authority One Thousand Dollars (\$1,000) per month for each month in which Customer service requirements were not met.

9.6.2 The performance bond shall become the property of the Franchising Authority in the event that Company's Franchise is cancelled by reason of default of the Company. The Company, however, shall be entitled to the return of the performance bond, or portion thereof, as remains at the expiration of the term of this Agreement, provided that there is no then outstanding default or existing obligation on the part of the Company.

SECTION 10. TRANSFERS AND ASSIGNMENTS

10.1 Transfer of Franchise or Interest Therein

10.1.1 Consent Generally Required.

(A) Except as set forth in Section 10.1.2, Company shall not sell, transfer, lease, assign, sublet, encumber, pledge, deed, grant, mortgage or dispose of, in whole or in part, either voluntarily or involuntarily, by forced or involuntary sale or transfer, or by ordinary or voluntary sale, transfer, consolidation or otherwise, the Franchise and/or Cable System or any right, title or interest therein, or rights or privileges granted by the Franchise ("Transfer"), without the prior consent of the City Council of the Franchising Authority, which consent shall not be unreasonably withheld; though the

Franchising Authority shall have the option to grant consent, grant consent subject to specified conditions, or deny consent. Any attempt to Transfer the Franchise and/or Cable System without the consent of the City Council shall be null and void. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the City Council shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness.

(B) The following events shall be deemed to be a Transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of the assets of, Company, or its parent company; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interest in, Company or its parent company (except publicly traded shares of CenturyLink, Inc.) by one or more of its existing share holders, partners, members or other equity owners so as to create a new Controlling Interest in Company or its parent company; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by Company or its parent company so as to create a new Controlling Interest in such entity or its parent (except for publicly traded shares of CenturyLink, Inc.); and (iv) the entry by Company or its parent company into one or more agreements with respect to the management or operation of such entity and/or the Cable System. The term "Controlling Interest" as used in this Section 10 is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(C) In the case of any Transfer of any Franchise and/or Cable System the Franchising Authority shall have one hundred twenty (120) Days to act upon any request for approval of such Transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations, the requirements of this Agreement or such other reasonable information as the Franchising Authority, in its sole discretion, may request. If the Franchising Authority fails to render a final decision on the request within one hundred twenty (120) Days from receipt by the Franchising Authority of all required information, such request shall be deemed granted unless the requesting party and the Franchising Authority agree to an extension of time.

(D) Company shall notify Franchising Authority in writing upon learning of any pending or proposed foreclosure or other judicial, trustee or other sale of all or a substantial part of the Franchise, Cable System or other assets of the Company or its parent company or upon the termination of any lease or interest covering all or a substantial part of said Franchise, Cable System or other assets. Such notification shall be considered by Franchising Authority as notice that a Transfer of the Franchise and/or Cable System has taken place and the provisions under this Section 10 governing the consent of

Franchising Authority to such change in Controlling Interest or ownership of assets shall apply.

(E) For the purpose of determining whether it shall consent to such change, Transfer, or acquisition of control, Franchising Authority may inquire into the legal, technical and financial qualifications of the prospective transferee or controlling party, and obtain any other information or make any other inquiry as the Franchising Authority deems necessary or appropriate, and Company shall assist Franchising Authority in any such inquiry. Except for Transfers described in Section 10.1.2, in seeking Franchising Authority's consent to any Transfer, Company shall file with the Franchising Authority an application in form of FCC Form 394. The application shall be submitted to the Franchising Authority not less than ninety (90) Days prior to the date of Transfer. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the Franchise and/or System and comply with all applicable requirements for the remainder of the term of the Franchise. If, after considering the legal, financial and technical qualities of the applicant and determined they are satisfactory, the Franchising Authority finds that such Transfer is acceptable, the Franchising Authority shall transfer and assign the rights and obligations of such Franchise and/or Cable System, subject to the applicable terms of the City Code and such other terms or conditions specified by the Franchising Authority. The consent of the Franchising Authority to such Transfer shall not be unreasonably denied.

(F) Any financial institution having a pledge Company or its assets for the advancement of money for the construction and/or operation of the Cable System or Franchise shall have the right to notify the Franchising Authority that it or its designee satisfactory to the Franchising Authority shall take control of and operate the Cable System or Franchise, in the event of default by Company in any of its financial obligations, subject to approval of Franchising Authority. Further, said financial institution shall also submit a plan for such operation within thirty (30) Days of assuming such control that will insure continued service and compliance with all applicable requirements during the term the financial institution exercises control over the Cable System or Franchise. The financial institution shall not exercise control over the Cable System for a period exceeding one (1) year unless extended by the Franchising Authority in its discretion and during said period of time it shall have the right to petition the Franchising Authority to transfer the Franchise or Cable System to another company. Company shall pay or reimburse costs of the Franchising Authority to analyze, consider or make a decision regarding any proposed Transfer.

10.1.2 Transactions for Which Consent is Not Required. The prior consent of the Franchising Authority shall not be required with respect to intra corporate transfers or reorganizations between or among wholly owned or controlled subsidiaries of CenturyLink, Inc., provided, however, that any such transaction

that constitutes a direct or indirect Transfer to a Person that is not a wholly owned or controlled subsidiary of CenturyLink, Inc. shall require prior consent of the Franchising Authority pursuant to Section 10.1.1. The Franchising Authority will be given at least thirty (30) Days prior written notice of any such transaction, and will be provided any such information as may be reasonably requested by the Franchising Authority.

10.1.3 No Waiver. The consent or approval of the Franchising Authority to any Transfer shall not constitute a waiver or release of any pending violations of this Agreement, known or unknown to the Franchising Authority or Company, any Franchise Fees, or any enforcement rights of the Franchising Authority under Applicable Law or this Agreement.

SECTION 11. SPECIFIC RIGHTS AND REMEDIES

11.1 Remedies Not Exclusive. Franchising Authority shall have the specific rights and remedies set forth in this Section 11. These rights and remedies are in addition to any and all other rights or remedies set forth in this Agreement or as, now or hereafter available to the Franchising Authority to enforce the provisions of this Agreement, and will not be deemed waived by the exercise of any other right or remedy. The exercise of any such right or remedy by the Franchising Authority shall not release any obligations or liabilities under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery or payments.

11.2 Performance Bond.

11.2.1 Within thirty (30) days after the Effective Date, the Company shall deposit with the Clerk of the Franchising Authority a performance bond from a surety authorized to do business in the State of Nebraska and acceptable to the Franchising Authority in the minimum amount of One Hundred Thousand Dollars (\$100,000). The form and content of such performance bond shall be subject to the approval of the City Attorney and shall contain a provision that the issuer of such performance bond can rely absolutely on the demand of the Franchising Authority upon said performance bond. The performance bond shall be annually renewable and shall be used to ensure the faithful performance by Company of all provisions of this Agreement, including payment of Franchise Fees; compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the Franchising Authority having jurisdiction over its acts or defaults under this Agreement; and the payment by Company of all claims, liens, liquidated damages and taxes due the Franchising Authority. In the alternative, and subject to the same requirements as set forth in this Section 11.2, Company may furnish a letter of credit in the required amount, in form and content (and issued by a financial institution authorized to do business in the State of Nebraska and) acceptable to the Franchising Authority.

11.2.2 The performance bond shall be maintained at the minimum amount of One Hundred Thousand Dollars (\$100,000) during the entire term of this Franchise, even if amounts are withdrawn pursuant to this section.

11.2.3 If Company fails to pay the Franchising Authority any amount within the time fixed herein, or fails to pay to the Franchising Authority any taxes due and unpaid, or fails to pay or repay the Franchising Authority within ten (10) Days any damages, costs, or expenses which the Franchising Authority is compelled to pay by reason of the acts or default of Company in connection with the Franchise, or fails after receipt of thirty (30) Days' written notice of such failure by the Franchising Authority to comply with any provision of this Franchise which the Franchising Authority reasonably determines can be remedied by an expenditure of money, the Franchising Authority may, subject to Section 11 herein, demand and receive payment of the amount thereof, with interest, under the performance bond. Upon such demand for payment, the Franchising Authority shall notify Company of the amount and date thereof.

11.2.4 The performance bond shall contain the following endorsement: "It is hereby understood and agreed that this performance bond may not be canceled by the issuer hereof nor the intention not to renew be stated by the issuer hereof until thirty (30) Days after receipt by the Franchising Authority, City of La Vista, Nebraska, by registered mail of a written notice of such intention to cancel or not to renew." Within thirty (30) Days after receipt by the Franchising Authority of said notice, the Company shall obtain and furnish to the Franchising Authority a replacement performance bond in a form reasonably acceptable to the Franchising Authority.

11.3 Events of Default

11.3.1 Grounds. Subject to Section 13.8 of this Agreement, Company agrees that an Event of Default ("Event of Default") shall include, but shall not be limited to, any of the following acts or failures to act:

(A) Company's material breach or violation of any of the terms, covenants, representations or warranties contained herein, Company's failure to perform any obligation hereunder;

(B) The foreclosure or other judicial or nonjudicial sale or Transfer of all or any material part of the Franchise or Cable System, except as approved by the Franchising Authority pursuant to Section 10 of this Agreement;

(C) The condemnation by a public authority other than the Franchising Authority, or sale dedication under threat or in lieu of condemnation, of all or any material part of the Cable System;

- (D) The suspension or discontinuance of business by the Company;
- (E) Any denial, forfeiture or revocation by any federal, state or local governmental authority of any authorization required by law for the provision of Cable Services or the expiration without renewal of any such authorization;
- (F) Company's failure to pay the Franchise Fee or failure of Company to pay any other amount due under this Agreement;
- (G) Company's failure to pay any taxes of any kind, including, but not limited to, property or income taxes, due and owing to the City or Sarpy County on or before the due date for the same; provided, however, that Company shall not be in default with respect to any taxes that have not been paid because they are being disputed in good faith;
- (H) The entry of any judgment against the Company that remains unpaid for longer than forty-five (45) Days after entry (and is not stayed pending rehearing or appeal) which would materially impair Company's ability to provide Cable Services in the Franchise Area;
- (I) Dissolution or termination of the Company for any reason;
- (J) The Company's voluntary or involuntary filing in bankruptcy, insolvency, transfer for the benefit of creditors, failure to pay debts as they come due or any attempt to obtain protection from creditors;
- (K) Company's attempt to evade any material provision of the Franchise or practice any fraud or deceit upon the Franchising Authority or Subscribers or Customers of the Company; or
- (L) Failure to comply with the requirements set forth in Section 3 of this Agreement.

11.3.2. Franchising Authority Action Upon Occurrence of Event of Default. Upon the occurrence of an Event of Default, as set forth in Section 11.3.1, and in accordance with the procedures provided in Section 11.3.3, the Franchising Authority may take one or more of the following actions (in addition to, and not in limitation of, any other action, right or remedy available at law or equity):

- (A) require the Company to take such actions as the Franchising Authority deems reasonably appropriate to cure such Event of Default;
- (B) seek damages from the Company as compensation for such Event of Default;

- (C) seek to obtain the appointment of a court-appointed trustee or similar Person to take any actions which the Franchising Authority deems appropriate in the circumstances;
- (D) terminate this Agreement, in which case, the Franchise shall be forfeited; or
- (E) commence an action at law for monetary damages or in equity for injunctive relief or specific performance.

11.3.3 Default Procedures. The Franchising Authority shall notify the Company, in writing, of an Event of Default, which notice shall specify the alleged Event of Default with reasonable particularity. If the Event of Default is due to failure of the Company to pay money to Franchising Authority, Company shall cure the default by paying the full amount due with interest within thirty (30) Days after the date notice is given. For an Event of Default which cannot be cured by the payment of money to Franchising Authority, Company shall have sixty (60) Days after notice is given to cure the Event of Default. If the Event of Default is not cured, the Event of Default and proposed termination of the Franchise shall be considered by the City Council in accordance with such notices, public hearings and other procedural requirements as required by Applicable Law.

11.4 Termination. In the event of any termination of this Agreement, whether by expiration, revocation or otherwise, the Franchising Authority may: (i) direct the Company to cooperate with the Franchising Authority or third party in maintaining continuity in the distribution of Cable Service to Subscribers over the Cable System for a period of up to three (3) months; or (ii) order the Company to cease all construction and operational activities in a prompt and workmanlike manner. In such event, the Franchising Authority shall retain any Franchise Fees or other fees or payments already paid, and the Company shall immediately pay all other amounts that are due and payable upon the termination date. Company shall simultaneously submit to Franchising Authority a financial statement as would otherwise be required under this Agreement, showing all amounts that are due and payable upon the termination date.

11.5 New Legal Requirements. Franchising Authority shall have the option to reopen this Franchise Agreement within ninety (90) Days of any applicable federal or state law, regulation, rule or order that becomes effective after the Effective Date and affects the right of the Franchising Authority to regulate rates or protect Subscribers of Cable Services, and only those matters directly affected by the legislation shall be at issue in the event the Franchise Agreement is reopened or matters that may otherwise be mutually agreed to by the parties.

SECTION 12. INSURANCE AND INDEMNITY

12.1 Insurance

12.1.1 Specifications:

(A) Liability Insurance. Throughout the term of this Agreement and during the removal of the Cable System, the Company shall, at its own cost and expense, maintain a general comprehensive public liability insurance policy or policies that are in a form and content reasonably acceptable to the Franchising Authority, together with evidence reasonably acceptable to the Franchising Authority demonstrating that the premiums for said policy or policies have been paid. Such policy or policies shall be issued by one or more companies licensed to do business in the State of Nebraska with a rating by A.M. Best & Co. of not less than "A." Such policy or policies shall provide coverage on an "occurrence" basis and shall insure (i) the Company and (ii) the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees (through appropriate endorsements if necessary) against each and every form of liability of the Company, or Franchising Authority referred to in, or arising out of or resulting from this Agreement with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. Standard form of cross liability shall be afforded. An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Company's operations under this Franchise and that no other insurance maintained by the Franchising Authority will be called upon to contribute to a loss under this coverage. The insurance required by this Section 12.1.1 shall include coverage for, but shall not be limited to covering, property damage.

(B) Workers' Compensation. The Company shall comply with the Nebraska Workers' Compensation Act and in that regard shall during this Agreement and removal of the Cable System secure insurance from an insurer licensed in the State of Nebraska to cover its obligations with respect to workers' compensation claims, or take other appropriate steps, which insurance and steps shall be in form and substance satisfactory to the Franchising Authority. The Company shall indemnify and hold harmless the Franchising Authority and its officers, boards, commissions, councils, officials, agents and employees from any workers' compensation claims to which the Company may become subject during the term of this Agreement or removal of the Cable System.

(C) Other Coverages. The Company shall at all times during this Franchise also maintain the following types of insurance, written by an insurer licensed in the State of Nebraska and acceptable to the Franchising Authority (and in form and content acceptable to the Franchising Authority)

to indemnify, defend and hold harmless Franchising Authority and its officers, boards, commissions, councils, officials, agents and employees from and against the specified risks:

- (i) \$1,000,000 per person, \$5,000,000 per occurrence comprehensive automobile liability insurance.

(D) Maintenance. The Company shall maintain said insurance policies throughout the term of this Agreement and such period of time during which the Company provides Cable Services and until all performance under this Agreement is completed. Each such policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled, the amount or extent of coverage decreased, nor the intention not to renew be stated until thirty (30) Days after receipt by the Franchising Authority, by registered mail, of a written notice of such intent to cancel, decrease coverage or not renew." Within thirty (30) Days after receipt of notice, the Company shall obtain and furnish to the Franchising Authority replacement insurance policies in a form reasonably acceptable to the Franchising Authority. The Franchising Authority and each of the parties for which insurance protection is to be provided by Company under this Agreement shall be designated in the governing policies as additional named insureds. Within thirty (30) Days after the Effective Date, and at such other times as requested by Franchising Authority, Company shall provide Franchising Authority with certificates of insurance evidencing the coverages in effect in accordance with this Section 12.1. Failure to maintain the insurance required by this Section 12.1 shall be a material breach of this Agreement.

12.1.2 Increased Insurance Coverage. In the event of any changed circumstances following the Effective Date, if the Franchising Authority wishes to alter the minimum limitation of the liability insurance policy or policies required in Section 12.1, then the Franchising Authority and Company shall negotiate such alteration in good faith.

12.1.3 Liability Not Limited. The legal liability of the Company to the Franchising Authority and any Person for any of the matters which are the subject of the liability insurance policies required by this Section 12.1 including, without limitation, the Company's indemnification obligations set forth in this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Company.

12.2 Indemnification of the Franchising Authority. Company shall defend, indemnify, and hold harmless the Franchising Authority, its officers, officials, employees, agents, attorneys, consultants,

boards, commissions, representatives and independent contractors ("Indemnified Parties") from and against any and all liabilities, costs, claims, damages, penalties, charges, losses or expenses of any kind (including, without limitation, attorneys' fees and court costs) in any way arising out of or resulting from: (i) the operation of, or any risk, event or occurrence related to, this Franchise or the Cable Service, or any part thereof or activity or function related thereto, or to any production or distribution thereof or thereunder, (ii) any Company property, (iii) the failure of Company or any of its respective officers, agents, employees, successors, or assigns to comply with any applicable federal, state or local law, rule, regulation or order, or (iv) any act, omission or negligence of Company or its respective officers, agents, employees, successors or assigns.

12.3 Non-waiver. The fact that Company carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Company's duty of defense and indemnification under this subsection.

SECTION 13. MISCELLANEOUS

13.1 Controlling Authorities. This Agreement shall be deemed to be executed in La Vista, Nebraska and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Nebraska, as applicable to contracts entered into and to be performed entirely within that State and such other laws of the State as are applicable to the Agreement or the subject matter thereof. This Agreement is made with the understanding that its provisions are controlled by and subject to Applicable Law.

13.2 Compliance with State and Federal Laws.

(A) Notwithstanding any other provision of this Agreement to the contrary, the Company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof, provided however, if any such state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any service, in conflict with the terms of this Agreement or of any law or regulation of the Franchising Authority, then as soon as possible following knowledge thereof, the Company shall notify the Franchising Authority of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Franchising Authority or this Agreement.

(B) Should the City Council determine a material provision of this Agreement is affected by any subsequent action of the state or federal government, the City Council shall have the right to

modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Agreement; with the consent of the Company to the extent the modification is not required by law.

13.3 **Nonexclusive Franchise.** Nothing in this Agreement shall affect the right of the Franchising Authority to grant to any Person a franchise, consent, or right to occupy and use the Streets, or any part thereof, for the construction, operation, or maintenance of all or any part of a cable system within the Franchise Area or for any other purpose. This Agreement does not establish any priority for the use of the Rights of Way.

13.4 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assigns.

13.5 **Other Matters.** The parties acknowledge and agree that the grant of this Franchise is not an agreement, acquiescence or a waiver of any right, remedy or defense of Franchising Authority or Company with respect to the use of the Rights of Way for purposes other than the operation of the Cable System to provide Cable Services.

13.6 **Notices.** All notices shall be in writing and shall be sufficiently given and served upon the other party when deposited in the first class mail, registered or certified, return receipt requested, postage prepaid, and addressed as follows:

FRANCHISING AUTHORITY

City Clerk
City of La Vista, Nebraska
8116 Parkview Boulevard
La Vista, NE 68128

With Copy to:

Thomas McKeon
Fitzgerald, Schorr, Barmettler & Brennan, PC, LLO
200 Regency One
10050 Regency Circle
Omaha, NE 68114

COMPANY

Qwest Broadband Services, Inc. d/b/a CenturyLink
Attn: Public Policy
1801 California Street, Floor 10
Denver, CO 80202

With courtesy copy to:

CenturyLink
Attn: Public Policy / Governmental Affairs
1314 Douglas on The Mall
Omaha, NE 68102

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

13.7 Headings. Headings used in this Agreement are for convenience only and have no substantive effect or consequence, except for headings used in Section 1 of this Agreement.

13.8 Delays and Failure Beyond the Control of the Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to events beyond its control, including but not limited to, strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage, or other events beyond its control. In the event that such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all such steps within its power to correct such cause(s). The Company agrees that in correcting such cause(s), it shall take reasonable steps to do so in as expeditious a manner as possible.

13.9 Other Petitions and Applications. Upon request of the Franchising Authority, Company shall provide copies of public filings submitted by CenturyLink, Inc. or the Company to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the Cable System or Cable Services authorized pursuant to the Franchise or this Agreement.

13.10 No Waiver; Cumulative Remedies. No failure on the part of any party to exercise, and no delay in exercising, any right or remedy hereunder including, without limitation, the rights and remedies set forth in Section 11 of this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy. The rights and remedies provided herein including, without limitation, the rights and remedies set forth in Section 11 of this Agreement, are cumulative and not exclusive of any remedies provided by law or in equity, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority under Applicable Law or in equity.

13.11 Eminent Domain. Nothing herein shall be deemed or construed to impair or affect, in any way to any extent, the right of the Franchising Authority to acquire the property of the Company through the exercise of eminent domain, at a fair and just value, which shall not include any amount for the Franchise itself or for any of the rights or privileges granted, or for relocation, and nothing shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the Franchising Authority's right to eminent domain.

13.12 Abandonment. Any property abandoned by the Company shall become, at the option of the Franchising Authority, property of the Franchising Authority, and the Company agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the Franchising Authority.

13.13 Reserved Rights. Notwithstanding anything in this Agreement to the contrary, this Agreement is subject to the Franchising Authority's: (i) right to control, manage and regulate Rights of Way and other public property; (ii) ordinances related to the subject matter of this Agreement, as amended from time to time, and not expressly revoked by this Agreement; (iii) right to install or maintain without charge any equipment or lines of the Franchising Authority on the poles or in conduit within Right of Way of the Franchise Area, so long as such use does not interfere or compete with Cable Services provided by Company; and (iv) right to require upon expiration or termination of this Agreement all or any part of the Cable System be removed at Company's sole cost and expense.

13.14 Time Essence of this Agreement. Whenever this Agreement shall set forth any time for any action to be performed by or on behalf of the Company such time shall be deemed of the essence and any failure of the Company to perform within the time allotted shall always be sufficient grounds for the Franchising Authority to seek termination of the Franchise or other appropriate remedy.

13.15 No Agency. The Company, and its Affiliates or subsidiaries each shall perform any obligation required under this Agreement as an independent contractor and not as an agent of the Franchising Authority.

13.16 Claims Under Agreement. The Franchising Authority and the Company agree that, except to the extent otherwise required by the Cable Act, any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States ("Federal Court") located in Douglas County, Nebraska or in a court of appropriate jurisdiction located in Sarpy County, Nebraska ("Nebraska Court"). To effectuate this Agreement and intent, the Company agrees that if the Franchising Authority initiates any action against the Company in Federal Court or in a Nebraska Court, service of process may be made on the Company either in person, wherever Company may be found, or by registered mail addressed to the Company at its office in Nebraska as required by this Agreement, or to such other address as the Company may provide to the Franchising Authority in writing.

13.17 Additional Representations and Warranties. In addition to the representation, warranties, and covenants of the Company to the Franchising Authority set forth elsewhere in this Agreement, the Company represents and warrants to the Franchising Authority and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection

or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date and continuing thereafter during the term of this Agreement:

(A) The Company is and shall continue as a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado, and is duly authorized to do business in the State of Nebraska and in the Franchise Area and to perform the obligations set forth in this Agreement; and

(B) The Company is in substantial compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the Cable System or Cable Service, and all government licenses, permits, and authorizations necessary have been obtained for the operation and maintenance of the Cable System or Cable Service or any other performance under this Agreement.

13.18 Company to Have No Recourse. Except, as expressly provided in this Agreement, the Company shall have no recourse whatsoever against the Franchising Authority, its officers, boards, commissions, agents, attorneys or employees for any loss, cost, expense or damage arising out of or relating to the Cable System or Cable Service or any action or inaction of the Franchising Authority with respect thereto, nor for the failure of the Franchising Authority to have the authority to grant all or any part of any franchise. The Company expressly acknowledges that, in accepting the Franchise and other specified obligations by executing this Agreement, it does so relying upon its own investigation and understanding of the power and authority of the Franchising Authority to grant a franchise. By accepting the Franchise and becoming signatory hereto, the Company acknowledges it has not been induced to enter into this Agreement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Franchising Authority or by any other third Person concerning any term or condition not expressed herein. The Company further acknowledges by the acceptance of the Franchise that it has carefully read the terms and conditions hereof, and of law, and is willing to and does accept all of the risks of the meaning of such terms and conditions. All parties have participated in the drafting of this Agreement and have approved all of its terms and provisions. Accordingly, the parties waive the application of any rule of law to the effect that ambiguous or conflicting terms or provisions shall be interpreted or construed against the party who prepared the executed document.

13.19 Entire Agreement. This Agreement, including the recitals above and any exhibits, documents or instruments referenced in this Agreement, all of which shall be incorporated herein by reference, embodies the entire understanding and agreement of the parties with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings,

whether oral or written, among or between any of the parties with respect to the subject matter hereof; including, without limitation, all prior drafts of this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of any party.

13.20 Modification. Except as otherwise provided in this Agreement or Applicable Law, no provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by both parties, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution, ordinance or order by the Franchising Authority in accordance with Applicable Law.

13.21 Severability. If any section, subsection, provision, paragraph, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.22 Nondiscrimination. Notwithstanding anything in this Agreement to the contrary, (i) neither Company nor any subcontractor of Company shall discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability, or national origin; and (ii) City is a recipient of federal funds and all required contractual provisions of a recipient of federal funds shall be deemed incorporated into this Agreement by this reference and shall be binding upon the parties.

IN WITNESS WHEREOF, the parties by our respective duly authorized agents hereto affix our signatures and seals.

CITY OF LA VISTA, NEBRASKA,
A Municipal Corporation

By: _____
Douglas Kindig, Mayor

DATE: _____

Attest:

Pamela A. Buethe, City Clerk

DATE: _____

(SEAL)

QWEST BROADBAND SERVICES, INC.,
a Colorado Corporation

By: _____
R. Steven Davis, Executive Vice President

DATE: _____

STATE OF NEBRASKA)
) ss
COUNTY OF _____)

On _____, 2013 before me, a Notary, personally appeared R. Steven Davis, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity on behalf of Qwest Broadband Services, Inc., d/b/a CenturyLink, and that by his signature on the instrument executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit A

SECTION 5. GOVERNMENTAL ACCESS OBLIGATIONS

5.1 Channel Capacity. The Company shall designate channel capacity on the Basic Service tier for Governmental Programming to be provided by the Franchising Authority or its designee (which programming may be provided pursuant to an interlocal cooperation agreement in conjunction with one or more of Ralston, any other municipality in Sarpy County or any other municipality, as agreed by the Franchising Authority, or a board or committee of representatives authorized by said municipalities and the Franchising Authority). The Company shall initially designate two (2) Channels for Governmental Programming. Except as otherwise provided by law, the channels and any programming thereon shall be under the exclusive management and control of the Franchising Authority or its designee and shall be used solely for Governmental Programming.

5.2 Channel Designations. The Company shall have sole discretion to make Channel number assignments for Governmental Programming Channels. Once Channels are assigned, the Company shall make every reasonable effort to continue cablecasting of Governmental Programming on the Cable System on the same Channels. In the event the Company is required by federal law or regulations to change the Channel number of a Governmental Programming Channel, the Company shall provide thirty (30) Days advance notice to the Franchising Authority and its Subscribers. Should the Company decide to change the Channel number for any other reason, the Company shall notify the Franchising Authority of such change and the reason for the change at least thirty (30) Days prior to the proposed change. Company shall use its best efforts to place Governmental Programming Channels in a consecutive or near-consecutive block of Channel numbers in reasonably close proximity to other public affairs programming (e.g., CSPAN, PBS) on the Basic Service tier. Company agrees not to encrypt the Governmental Programming Channels any differently than commercial Channels available on the Cable System. Company at the option of the Franchising Authority shall work with the Franchising Authority to place educational or governmental content on the Cable System in the form of video "on demand" programming. Only upon mutual written agreement by Company and Franchising Authority may Company consolidate the Governmental Programming Channels to a single Channel on the Basic Service tier. If mutually agreed upon, all of the Governmental Programming Channels could then be accessed either as an application on a menu or as choices on the assigned Channel. The Franchising Authority agrees to consider any reasonable proposal regarding Governmental Programming consolidation.

5.3 Additional Governmental Programming Channels. The Company shall make available up to one (1) additional Governmental Programming Channel to the Franchising Authority pursuant to this section. This Channel shall be made available if the following criteria are met:

(i) Existing Governmental Programming on each existing Governmental Programming Channel exceeds eighteen (18) hours per Day, at least six (6) Days per week, and this level of programming is continuous for a period of twenty-six (26) consecutive weeks;

(ii) At least 70% of such Governmental Programming is locally produced programming, of which at least twelve (12) hours per week is programming other than character generated programming.

(iii) No more than four (4) hours per Day of Governmental Programming during such twenty-six (26) week period represents repeat programming. For the purposes of this section "repeat" programming shall consist of programming that has already been shown at least one time on any Governmental Programming Channel during the preceding four (4) weeks. The additional Governmental Programming Channel shall be made available within 60 Days following the written request of the Franchising Authority and verification of compliance with each of foregoing conditions.

5.4 Use of Unused Capacity. Whenever any Governmental Programming Channel is programmed for less than eight (8) hours per Day, six (6) Days per week for a continuous period of not less than twenty-six (26) consecutive weeks, the Franchising Authority shall permit the Company to utilize unused channel capacity on that channel; subject to such rules and procedures as specified by Franchising Authority from time to time. Any request from the Company to use any fallow capacity designated for a Governmental Programming Channel must be submitted in writing to the Franchising Authority. If the Franchising Authority fails to act on the Company's request within sixty (60) Days, it shall be deemed approved. After approval, the Company may continue to utilize the unused capacity of the channel for any other purposes it so chooses, consistent with the Franchise, until the Franchising Authority determines that all or a part of such channel capacity is needed for Governmental Programming. The Company shall be given not less than sixty (60) Days to relinquish use of part of the Channel back to the Franchising Authority. This provision shall not be construed to require the Franchising Authority to rearrange or reschedule any programming upon said channel.

5.5 Additional Governmental Programming Requirements. The Company's duty to perform any obligation set forth in Sections 5.5 through 5.17 of this Exhibit A below shall arise when the same or a substantially similar obligation is required of any other cable service provider pursuant to a cable franchise agreement now or hereafter in effect with the City.

5.6 Control of Governmental Programming Channels. The control and administration of the Governmental Programming Channels shall rest with the Franchising Authority and the Franchising Authority may delegate, from time to time over the term of this Agreement, such control and administration to various entities as determined in Franchising Authority's sole discretion. The Franchising Authority may at any time allocate or reallocate the usage of the Governmental Programming Channel(s) among and between different uses and users in the Franchising Authority's sole discretion. Company and QC each agrees to cooperate and consult with Franchising Authority, free of charge, to ensure that any purchases of equipment by Franchising Authority and installations completed by the Franchising Authority are compatible with the Company's Cable Service and Cable System, technology and reasonably foreseeable system specifications.

5.7 Governmental Programming Channel Functionality. Governmental Programming Channels shall be capable of transmitting the primary video stream, related audio, and accompanying program related material within the Governmental Programming Channel video stream. "Program related material" shall mean (i) closed captioning for the hearing impaired, (ii) one alternative language or secondary audio program feed, (iii) program ratings information, (iv) such other material as may be essential to or necessary for the delivery of distribution of the primary video stream in a digital form; (v) video description information; and (vi) any material the FCC specifically identifies as program related material that a cable operator retransmitting a broadcast television signal pursuant to FCC must-carry rules is required to retransmit as part of a broadcast television signal; provided that Company is technically capable of passing through any such program related material; and provided, further, that program related material shall not include any interactive element or transactional application that requires the functionality of a two-way cable or similar plant or otherwise suggests that a return path will be provided, including, without limitation, any feature that prompts a Customer to attempt to utilize "triggers" or other options that are enabled by a return path. All such related audio and other material shall be provided as part of the Governmental Programming Channel programming feed transmitted to the Company; Company shall not be required to insert such related audio and other material onto a Governmental Programming Channel.

5.8 Governmental Programming Channels carried in High Definition. At such time as Company no longer offers the Basic Service tier in an analog format, the Franchising Authority shall have the option, upon one hundred twenty (120) Days written notice to Company, to provide Governmental Programming

Channel signals to Company in a high-defintion (HD) format (e.g. 1080i [1920 x 1080 interlaced], or some other format) utilized by one (1) or more of the commercial broadcast television stations. Company or QC shall, without cost to the Franchising Authority or Subscribers, provide, install, and maintain in good working order the equipment necessary for transmitting such signals to Subscribers.

5.9 Programming Delivery. The Franchising Authority shall ensure Governmental Programming Channels and signals are in compliance with applicable FCC technical standards so the signal quality can be processed in the Cable System headend and retransmitted to Subscribers. Company shall not discriminate against Governmental Programming Channels with respect to the functionality, signal quality, and features from those of the local broadcast Channels carried on the Cable System. With respect to signal quality, Company shall not be required to carry a Governmental Programming Channel in a higher quality format than that of the Channel signal delivered to Company, but Company shall distribute the Governmental Programming Channel signal without degradation. Company may transmit the Governmental Programming Channels to Customers in a format of its own choosing, subject to Section 5.2, above. Any and all costs associated with any modification or conversion of the Governmental Programming Channels or signals after the Governmental Programming Channels/signals leave the Franchising Authority's designated playback facilities, or any designated playback center authorized by the Franchising Authority, to a format different than that delivered by the Franchising Authority shall be provided by Company at no cost to the Franchising Authority or its designees. Company shall not cause any programming to override Governmental Programming on any Governmental Programming Channel, except by oral or written permission from the Franchising Authority, with the exception of emergency alert signals. The Franchising Authority or its designee shall ensure that the quality of the Governmental Programming Channel programming (as it leaves the Franchising Authority's playback locations) is comparable with that of similarly formatted signals received by Company from commercial providers. In no event shall Company reduce the bit rate or quality of the Governmental Programming signals it receives from the Franchising Authority.

5.10 Navigation to Governmental Programming Channels. Company agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Governmental Programming Channels shall be treated in a non-discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to Governmental Programming Channels. This shall not be construed to require Company to pay any third party fees that may result from this obligation or install or modify any standard equipment or software to accommodate the inclusion of Governmental Programming Channels on its programming guide.

5.11 Noncommercial Use of Governmental Programming. Governmental Programming Channels are for noncommercial programming to be promoted and administered by the City as allowed under Applicable Law. Permitted noncommercial uses of the Governmental Programming Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of Governmental Programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may, for example, offer telecourses over a Governmental Programming Channel.

5.12 Initial Dedicated Fiber Return Lines. Company shall ensure the design, construction and maintenance, throughout the term of this Agreement, at Company's expense, all Governmental Programming upstream feeds, connections and distribution facilities between the Cable System headend and each location identified below as well as other return lines and associated equipment that are listed below to enable the distribution of Governmental Programming to Company's Subscribers without material degradation of signal quality. The Franchising Authority shall ensure Governmental Programming signals leaving the playback facilities are in compliance with applicable FCC technical standards. Company shall ensure the construction, repair, replacement and maintenance over the term of the Agreement all necessary technical equipment, fiber

and related infrastructure to provide high quality twenty-four (24) hours per Day fiber return feeds for each Governmental Programming Channel from the following designated access sites to the Cable System headend:

- (i) La Vista City Hall, 8116 Parkview Boulevard or an alternative site within the City as designated by the City, and
- (ii) Any other sites designated in an interlocal agreement entered by the City pursuant to Section 5.1 of this Exhibit A ("Initial Lines").

5.13 Future Fiber Return Lines for Governmental Programming. At such time that the Franchising Authority determines:

- (i) that the Franchising Authority desires the capacity to allow Subscribers in the Franchise Area to receive Governmental Programming (video or character generated) which may originate from schools, facilities operated by the Franchising Authority, other government facilities or other designated facilities (other than the Initial Lines indicated in Section 5.12 of this Exhibit A); or
- (ii) that the Franchising Authority desires to establish or change a location from which Governmental Programming is originated; or
- (iii) that the Franchising Authority desires to upgrade the connection to Company from an existing signal point of origination; the Franchising Authority shall give Company written notice detailing the location of the new point of origination or the new capability sought by the Franchising Authority ("Modifications"). Company shall thereafter respond with a written cost estimate ("Estimate") of what is necessary to implement the Modifications within a reasonable period of time. Thereafter, the Franchising Authority shall have the option of either accepting the Estimate of Company and having the Modifications performed thereby or choosing to have the Modifications completed by a third party; provided, however, that if the Franchising Authority chooses a third party to perform such Modifications, said third party must agree to follow and be bound by the Company's standard protocols and procedures applicable to granting access to the Cable System for non-Company personnel and equipment.

5.14 Governmental Programming Fee. So long as this Agreement remains effective, Company shall provide an unrestricted cash grant to the Franchising Authority in the total amount of twenty cents (\$.20) per Subscriber, per month ("Governmental Programming Fee"). Company shall make such payments quarterly, following the Effective Date of this Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31, provided that Company shall have no obligations to commence payment of such cash grants the until the calendar quarter immediately following commencement by any other provider of Cable Services of such payments to the City and written notice thereof by the City to the Company. Each payment of Governmental Programming Fees shall be due and payable no later than thirty (30) Days following the end of each quarter. Company shall not be required to pay a greater per-subscriber Governmental Programming Fee than required by the franchise agreement with the City of any other provider of Cable Services in the Franchise Area. The Subscriber multiplier shall be calculated based on the number of Subscribers served by Company as of the first day of the calendar quarter for which the Governmental Programming Fee is made.

- (i) The Governmental Programming Fees may be spent by the Franchising Authority on any Governmental Programming related expense as determined appropriate in Franchising Authority's sole discretion. The Franchising Authority need not expend the Governmental Programming Fees immediately but rather may place such funds in a designated account with principal and interest to be used solely for Governmental Programming purposes over the term of the

Agreement as determined solely by the Franchising Authority. The Franchising Authority shall not encumber the Governmental Programming Fees for any other purpose. For purposes of calculating the Governmental Programming Fee only, in the case of multiple office buildings or multiple dwelling units, the "Subscriber" shall mean each lessee, tenant or occupant; not the building owner or landlord.

(ii) The Governmental Programming Fee shall not be considered "Gross Revenues" and is not part of the Franchise Fee. The parties agree that the Governmental Programming Fee falls within one (1) or more of the exceptions in 47 U.S.C. § 542(g)(2)(C) (2006). Company agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the Governmental Programming Fee.

(iii) Any Governmental Programming Fee amounts owing pursuant to this Agreement which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the Day the payment was due plus two percent (2%), whichever is greater, subject to any limitation on the interest rate under Applicable Law.

5.15 Governmental Programming Technical Quality.

(i) Company or QC shall maintain the Cable System, including the fiber return lines from the Governmental Programming origination points, in accordance with FCC technical Standards so that Governmental Programming is transported and processed by Company at the same level of technical quality and reliability as other commercial signals carried by Company. There shall be no significant deterioration in signal from the point of origination upstream to the point of reception downstream on the Cable System. All processing equipment used by Company for processing Governmental Programming signals will be of similar quality to the processing equipment used for other commercial Channels.

(ii) Within twenty-four (24) hours of a written request from Franchising Authority to the Company identifying a technical problem with a Governmental Programming Channel and requesting assistance, Company will provide technical assistance or diagnostic services to determine whether or not a problem with a Governmental Programming signal is the result of matters for which Company or QC is responsible and if so, Company or QC will take prompt corrective action. If the problem is caused by or the result of the Franchising Authority's equipment or action, the Company will advise the Franchising Authority of the required corrective action and, if Franchising Authority upon investigation agrees with the Company's assessment of the cause of the problem, Company may charge the Franchising Authority its standard rates for a commercial service call. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering personnel from the Company and the Franchising Authority in order to determine the course of action to remedy the problem.

5.16 Change in Technology. In the event any change is made in the Cable System, related equipment or facilities or signal delivery technology which requires the Franchising Authority to obtain new equipment in order to be compatible with such change for purposes of the Governmental Programming Channels, Company shall, at its own expense and free of charge to Franchising Authority or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Governmental Programming Channels in accordance with the requirements of the Agreement.

5.17 Relocation of Cable System Headend. In the event the Cable System headend is relocated, Company will be responsible for replacing or restoring the then-existing capability to send and receive

Governmental Programming at all existing locations at Company's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Agreement free of charge to the Franchising Authority or its designated entities.

Exhibit B
SECTION 7. CUSTOMER SERVICE

7.1 Customer Service Standard. Company shall comply with the customer service and protection standards: (i) set forth in this Agreement, (ii) adopted or amended from time to time by Company, (iii) from time to time adopted or amended by the FCC, and (iv) from time to time adopted or amended by any Cable Services trade association in which Company participates; provided, however, if there is any conflict between or among any two or more standards, the more stringent shall apply. To the extent permitted under federal law, Franchising Authority reserves the right to amend or revise the standards referred to in this Section 7 from time to time by ordinance upon sixty (60) Days advance written notice to Company.

7.2 Selection of Service. Company shall only charge Subscribers for Cable Services that Subscribers affirmatively request and shall not engage in "negative option" marketing or charge a Subscriber for any service or equipment which the Subscriber has not affirmatively requested.

7.3 Billing. Billings for Cable Services shall state in a conspicuous and understandable manner the amount of the bill, the date that payment is due, the date after which charges for late payment will be assessed, and the amount of any charges for late payment. Company shall not assess any charges for late payment earlier than twenty-one (21) Days after a bill is mailed to a Subscriber. Charges for late payment shall be no greater than an amount needed to reimburse the Company for additional costs incurred because of the Subscriber's delay in payment, and in any event shall not exceed One Dollar (\$1.00) unless otherwise authorized by the Franchising Authority.

7.4 Service Calls. Company shall require any person providing services in the community for or on behalf of Company to wear a uniform with a clearly visible Company logo and identification badge bearing the name and picture of the person wearing the same. Company shall account for all identification badges and uniforms at all times. Company vehicles used for service calls shall be clearly marked with a visible Company logo. Company shall not charge any Subscriber for any service call unless it is established that the required service is a result of negligence of, or malicious destruction of cable equipment by the Subscriber, or a problem that did not originate with the Cable System. Subscribers within the Franchise Area shall receive the same priority of service from the Company, its parent company and any of their respective Affiliates as Subscribers within any cable television franchise area located within a fifty (50) mile radius of La Vista City Hall, located at 8116 Parkview Boulevard, La Vista, NE 68128.

7.5 Disconnection. Company shall promptly disconnect Cable Service upon, and as of the effective date specified in, a request of any Subscriber. If no effective date is specified in a request, service shall terminate effective the Day following Day the request is received by the Company. Company shall not charge for any Cable Services after the effective date of termination of service.

Company may disconnect Cable Services to a Subscriber: (i) forty-five (45) Days after payment is due so long as Company provides at least ten (10) Days advance written notice to the Subscriber specifying the date that service will terminate (except Cable Service shall not be disconnected in the event nonpayment is due to a bona fide dispute regarding the Subscriber's bill); or (ii) at any time that the Company reasonably and in good faith determines the Subscriber tampered with or abused the Company's equipment or the Cable System or is stealing Cable Services, or determines that wiring on the premises (not provided by Company) violates FCC standards.

7.6 Customer Contacts. Company shall maintain within an eight (8) mile radius of City Hall of the Franchising Authority (or at such other location as agreed to by the Franchising Authority and Company) a conveniently-located local office or agent serving the Franchise Area, for the purposes of receiving payment of bills, receiving and responding to service requests, receiving and resolving Subscriber complaints and similar matters. Company also shall maintain a local toll-free telephone service for responding

to Subscribers. The office shall be open to the public during Normal Business Hours. The toll-free telephone service shall provide live operator assistance during Normal Business Hours and shall make available a live operator or telephone answering service at all other times. The office shall maintain for a period of five (5) years a record of each Subscriber complaint, response thereto and resolution thereof which shall be available for inspection by the Franchising Authority at the Company's local office during Normal Business Hours. In addition, upon request by the Franchising Authority, Company shall provide reports of customer service performance, including the number of calls or other customer contacts and Company's resolution of the same, to the extent permitted by Applicable Law.

7.7 Service Interruptions. Company shall interrupt Cable Service only for good cause and for the shortest possible time, unless otherwise permitted under Applicable Law. Company shall minimize the scope, degree and duration of any interruption. In the event of any foreseeable interruption of Cable Service, Company shall give the Franchising Authority advance written notice of the same except in the event the interruption is pursuant to a test required by the FCC. Company shall credit Subscribers pro rata for any Cable Services not received during an interruption. To minimize any service interruptions due to loss of electric power, Company shall maintain a backup power source sufficient to operate the Cable System for up to four (4) hours if there is a loss of conventional electric power.

7.8 Cable Information. Company shall not create, record or retain any information regarding the programming selected by any Subscriber nor shall Company sell, distribute, provide or make available to any Person (other than to Franchising Authority pursuant to Applicable Law or its role as franchiser) any information about or related to any Subscriber without the Subscriber's prior written authorization, except for such disclosure as necessary to carry out this Franchise Agreement, to provide Cable Services or detect unauthorized reception of any Cable Services.

7.9. Other Service Requirements.

(i) Under Normal Operating Conditions, telephone answer time by a Customer representative of Company, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, though Company shall not be required to acquire equipment or perform surveys to measure compliance with telephone answering standards unless historical record of complaints indicates a clear failure to comply.

(ii) Under Normal Operating Conditions, the Customer will receive a busy signal less than three percent (3%) of the time.

(iii) Under Normal Operating Conditions, the following standards will be satisfied at least ninety-five percent (95%) of the time:

(1) Company, unless prevented by events beyond Company's control, will begin work to correct any Service interruption as soon as possible and in any event not later than twenty-four (24) hours after receiving notice of the interruption. The Company shall begin work to correct any other Service problems the next business day after notification of the problem.

(2) The "appointment window" for Installations, Service calls, or other Installation activities will be either a specific time or, at a maximum, a four (4) hour block of time during Normal Business Hours; provided, however, Company may schedule Installations, Service calls and installation activities outside of Normal Business Hours for the sole convenience of the Customer.

(3) Company shall not cancel an appointment with a Customer after the close of business on the business day before the scheduled appointment.

(4) If Company's representative is running late for an appointment with a

Customer and will not keep the appointment as scheduled, the Customer will be contacted and the appointment will be rescheduled to a time convenient for Customer.

(iv) Company will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

- (1) Products and Services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and Service maintenance policies;
- (4) Instructions on how to use the Cable Service;
- (5) Channel positions of programming carried on the Cable System; and
- (6) Billing and complaint procedures, including the address and telephone number of the City's cable office.

(v) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Company, including the address of the responsible office of the City.

(vi) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of the Company. In addition, the Company shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by Subsection (iv) above.

(vii) In addition to the above requirement regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Company shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Company need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(viii) To the extent Company is required to provide notice of Service and rate changes to Subscribers, the Company may provide such notice using any reasonable written means at its sole discretion.

(ix) Notwithstanding any other provision of this section, Company shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Company and the Subscriber.

(x) Refunds. Refund checks will be issued promptly, but no later than either:

- (1) The Customer's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or
- (2) The return of the equipment supplied by the Company if Service is terminated.

(xi) Credits. Credits for Service will be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

(xii) Billing:

- (1) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

- (2) In case of a billing dispute, the Company must respond to a written complaint from a Subscriber within thirty (30) Days.

(xiii) Company shall, upon request, provide City with information which shall describe in detail Company's compliance with each and every term and provision of this Exhibit B.

(xiv) Subscriber Contracts. Company shall, upon request, provide the City with any standard form residential Subscriber contract utilized by Company. If no such written contract exists, Company shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to Customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Company's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

(xv) Late fees. Company shall comply with all Applicable Laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Company imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Company's compliance with all Applicable Laws to the maximum extent legally permissible.

(xvi) Disputes. All Subscribers and members of the general public may direct complaints regarding Company's Service or performance to the City Administrator or the City Administrator's designee, which may be a person, entity, board or commission.

(xvii) Removal of facilities. Upon termination of Service to any Subscriber, at the written request of the Subscriber the Company shall at its own expense, promptly remove all of its facilities and equipment from the premises of such Subscriber

In the event the City receives complaints regarding the Company's compliance with one or more of the above-referenced standards in this Exhibit B, the City may request, and the Company shall provide, information and records kept in the Company's normal course of business documenting Company's compliance with the specific term(s) and provision(s) of this Exhibit B that is the subject of the complaint. Company shall make a good faith effort to maintain its information and records in a manner so that the City can easily verify Company's compliance with the requirements of this Exhibit B.

Exhibit C
SECTION 8.1.3 FRANCHISE FEE PAYMENT WORKSHEET

	Month/Year	Month/Year	Month/Year	Total
Basic Service				
Installation Charge				
Expanded Basic Service				
Pay Service				
Pay-per-view				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Other Video Revenue				
Equipment Rental				
Processing Fees				
REVENUE				
Less Bad Debt				
Fee Calculated				

Fee Factor: 5%

**COMMUNICATIONS CABLE AND FACILITIES AGREEMENT
TO OCCUPY PUBLIC RIGHTS-OF-WAY**

THIS COMMUNICATIONS CABLE AND FACILITIES AGREEMENT TO OCCUPY PUBLIC RIGHTS-OF-WAY ("Agreement") is entered into this _____ day of _____, 2013, by and between the City of La Vista, Nebraska, a Municipal Corporation (hereinafter referred to as "the City") and Qwest Corporation d/b/a CenturyLink QC, a wholly-owned subsidiary of CenturyLink, Inc., (hereinafter referred to as "QC") (collectively the "Parties").

WHEREAS, the City is organized and existing under and by virtue of the laws of the State of Nebraska and possesses plenary power and authority over the use and occupation of the public Rights-of-way within its corporate boundaries; and

WHEREAS, QC desires to install, operate and maintain, or continue to operate and maintain, a Communications Cable System ("Cable System") and Facilities upon, over, under or within certain streets and public Rights-of-way within the corporate boundaries of the City; and

WHEREAS, QC also desires to install components of its Cable System within certain conduit which shall be owned and installed by QC which presently do not exist; and

WHEREAS, the City is authorized under the La Vista Municipal Code to grant occupancy of public Rights-of-way through formal actions of its Council and in writing; and

WHEREAS, the City and QC have agreed to be bound by the terms and conditions set forth herein which shall govern QC's use of the public Rights-of-way.

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

Section 1 - Definitions

As used in this Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. 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.

"Affiliate" means any person or entity that directly or indirectly controls or is controlled by or is under common control with a party to this Agreement.

"Cable Franchise Holder" means Qwest Broadband Services Inc. (QBSI), and its lawful and permitted successors, assigns and transferees, or any other holder of a Cable Franchise with the City of La Vista.

"Cable Service" means (1) the one-way transmission to subscribers of (a) video programming, which is programming provided by or generally considered comparable to programming provided by a television broadcast, or (b) other programming service, and subscriber

interaction, if any, which is required for the selection or use of such video programming or other programming service.

"City Code" means the La Vista Municipal Code and all other applicable laws, rules and regulations of the City, as enacted or amended from time to time.

"Effective Date" means the last date that this Agreement is executed by the Parties hereto.

"Communications Cable System" or **"Cable System"** shall mean Facilities now or hereafter owned or controlled by QC located within the Jurisdiction as now or hereafter constituted.

"Facilities" means all physical components of QC's Cable System located within the Jurisdiction, including without limitation cables, poles, wires, pipes, underground conduits, ducts, equipment cabinet, manholes, hand holes, vaults, fiber optic cables and devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.

"Gross Revenue" shall mean any and all compensation collected or received from users or subscribers or in any manner gained or derived by QC for the delivery of local exchange Telecommunications Services within the Jurisdiction of the City as it now exists or may be established hereafter.

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

"Occupation Tax" means a tax levied by the City as authorized by Neb. Rev. Stat. § 16-205 and set forth in Chapter 113 of the City Code.

"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.

"Telecommunication Service" shall mean the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission ("FCC") as enhanced or value-added. Telecommunications service does not include:

- (i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser

when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2007, and audio and video programming services delivered by providers of commercial mobile radio service as defined in 47 C.F.R. 20.3, as such regulation existed on January 1, 2007;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ringtones;

(x) Value-added, nonvoice data service means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing;

(xi) Vertical service means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(xii) Voice mail service means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Section 2 – Grant of Permission to Make Reasonable Use Public Rights-of-way

A. Subject to QC's compliance at all times with all of the terms and conditions of this Agreement, the City Code, 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, the City hereby grants to QC, 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, to construct, install, operate and maintain the Cable System and Facilities within the Jurisdiction; provided, however, that with respect to state highways and county roads, QC must separately obtain consent from the Nebraska Department of Roads and Sarpy County, respectively.

B. 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 persons or entities.

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

(1) To terminate this Agreement for misuse, non-use or failure of QC to comply with the provisions hereof;

(2) 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 in accordance with applicable law; and

(3) To require the removal or relocation of any of the Cable System and Facilities from the Rights-of-way if necessary or desirable, upon the request of and in the sole judgment of the City, for any public or municipal purpose or project, at QC's sole cost and expense (or its proportionate share of expense if QC shares Cable System and Facilities with other parties). QC may abandon any segment where a removal or relocation is required pursuant to the procedure in the City's Statement of Policy and Standard Specifications for Communications Cable on City Property ("Policy"), a copy of which is attached as Exhibit "A," Notwithstanding the above, the parties acknowledge that any removal or relocation for the benefit of a third party shall be at the sole expense of the third party and QC shall have the right to demand payment prior to commencement of such project.

D. The Policy, referenced herein, is incorporated into and made part of this Agreement. QC and its Cable System and Facilities shall be subject to the requirements of Section G for Private Use Providers or Section H for Public Use Providers of the Policy, as applicable, relating to costs to be paid to the City for the delivery of local exchange Telecommunication Services; provided, however, that QC shall not be subject to the requirements of Section G or Section H of the Policy for use of the Rights-of-way for Cable Services which are provided by any Cable Franchise Holder. The City acknowledges that as of the Effective Date of this Agreement QC is not authorized to provide Cable Services.

E. QC shall, upon at least fourteen (14) days prior written notice to QC by the City of any person or entity holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. QC may impose a reasonable charge on any person or entity for any such movement of its wires and may require payment in advance.

F. Upon termination of this Agreement, whether by expiration of the term or by earlier termination by a party as allowed by this Agreement, QC's rights to use of public Rights-of-way shall cease.

Section 3 - Scope; Prohibition Against Providing Cable Services

This Agreement confers only the right to make reasonable use of the Rights-of-way for QC's installation, operation and maintenance of its Cable System and Facilities and it is expressly conditioned that QC shall not operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer to provide "cable services" as that term is defined under federal law (47 U.S.C. §522(6)), without proper local, state, and federal authorization, as required by law.

Section 4 - Sales and Use Tax and Occupation Tax

A. To the extent QC's sale of the use of its Cable System and Facilities or sale or lease of its Cable System and Facilities to its customers is taxable, QC shall obtain a sales and use tax permit from the State of Nebraska and collect such taxes from its customers and promptly remit same to the State of Nebraska.

B. To the extent QC provides use of its Cable System and Facilities for delivery of local exchange Telecommunication services for private, non-public use, QC shall be subject to Section G of the Policy for Private, Non-Public Use, as applicable.

C. To the extent QC delivers local exchange Telecommunication Services for public use to any users or subscribers during the term of this Agreement, QC shall be subject to Section H of the Policy regarding the City's Telecommunication Services Occupation Tax, as provided in Chapter 113 of the City Code. QC shall not be subject to the requirement of Section H of the policy for use of its Cable System and Facilities within the Rights-of-Way for Cables Services, which are provided by any Cable Franchise Holder. The City acknowledges that QC, as of the effective date of this Agreement, is not authorized to provide Cable Services. For any period of time in which QC delivers local exchange Telecommunication Services, QC shall pay to the City, the Occupation Tax imposed by Chapter 113 of the City Code, but not in excess of any limits under Federal or Nebraska law, based upon the gross revenue it has collected as a result of providing use of its Cable System and Facilities for the delivery of local exchange Telecommunication Services pursuant to this Agreement.

D. At the time of the payment of any Occupation Tax which may be due under this Agreement, QC shall file with the City a statement of its Gross Revenue and other financial operations within the area covered by this Agreement, as well as a listing of the names and contact information for all persons, users, subscribers, Affiliates or entities using QC's Cable System and Facilities for the transmission of local exchange Cable and Telecommunication services, except to the extent prohibited by applicable law or regulation (e.g. CPNI). QC shall be obligated to provide, under the reasonable demand of the City, any additional information as may be reasonably required by the City to determine that the amount of Occupation Tax is correct and

proper and that QC is otherwise in compliance with the terms of this Agreement and Chapter 113 of the City Code.

E. In the event that QC leases or sells the use of its Cable System and Facilities to any other person, user, subscriber, Affiliate or entity for the transmission of Cable System and Telecommunication services during the term of this Agreement, QC shall report the names and contact information and intended use of QC's Cable System and Facilities by third parties to the City within 30 days of the execution of such lease or sale arrangement, except to the extent prohibited by applicable law or regulation (e.g. CPNI).

Section 5 - Use of Rights-of-way

A. QC shall be a party to the Nebraska One-Call System. Cable System and Facilities shall be located (through One-Call), installed and maintained so that none of the Cable System and Facilities endanger the lives, health or safety of persons, or interfere with any public improvements the City or other governmental entities (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 Cable System and Facilities hinder or obstruct the free use of the streets or other public ways. All Cable System and Facilities shall be located so as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any rights-of-way.

B. Prior to commencement of construction of any portion of its Cable System and Facilities within the City, QC shall furnish to the City the general schematic plans for its Cable System and Facilities, including, route maps, depictions, sketches or renderings of its equipment boxes and structures, engineering, traffic control, and landscaping plans. Such plans and reports may be reviewed by the City to ensure, (1) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration, and (3) that adverse impact on the environment has been minimized. QC shall comply with all regulatory requirements of the City and shall incorporate all other reasonable and lawful changes to its plans requested by the City.

C. All construction, excavation, maintenance and repair work done by QC shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to the City, the general public and individuals. QC shall be liable for any damage to the City or City-owned property caused by QC's negligence in connection with its work or failure to act in a timely manner. All such construction, excavation, maintenance and repair work done by QC shall comply with the City Code and all applicable codes of the State of Nebraska, and QC shall be responsible for obtaining all applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, repair or upgrade the Cable System and Facilities, prior to commencement of any such activity. The City shall have the right to inspect all construction or excavation work to insure compliance with applicable codes and permits, and may order QC to perform corrective work.

D. All public and private property disturbed by QC's activities shall be promptly restored by QC at its expense to substantially its former condition, subject to inspection by the

City's Director of Public Works, City Engineer or their designee and compliance by QC with reasonable remedial action required by said official pursuant to the inspection. QC shall be liable to the City for the full cost of restoring any public property not promptly or adequately remedied by QC as required by said official.

E. The installation, maintenance, renovation and replacement of Cable System and Facilities by QC shall be subject to regulation by the City Code and the attached Policy, including but not limited to, (a) the location of Cable System and Facilities in or upon the streets, alleys and dedicated easements within the Jurisdiction, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways within the Jurisdiction, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys within the Jurisdiction. All Cable System and Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, pre-existing electric and natural gas facilities, street lights, traffic signals, and all other municipal or authorized public use of the Rights-of-way. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the Cable System and Facilities, QC shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks. QC shall obtain the prior approval of the City before altering any water main, sewer or drainage system, or any other municipal structure in the streets required by the presence of the Cable System and Facilities in the streets. Any such alteration shall be made by QC, at its sole cost and expense and in a manner specified by the City. QC agrees that it shall be liable, at its own cost and expense, to replace or repair to serviceable condition, in a manner as specified by City, any Street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the Cable System and Facilities that may become disturbed or damaged as a result of any more work thereon by or on behalf of QC pursuant to this Agreement. The City's Director of Public Works or City Engineer may direct and require QC to locate its Cable System and Facilities within a defined telecommunications or cable corridor within any street or other right-of-way or otherwise at a specific location to minimize interference with other pre-existing Cable System and Facilities or utilities. QC shall install and maintain its Cable System and Facilities in such manner as to minimize interference with trees, natural features and vegetation.

F. The City agrees to make a good faith effort to process all of QC's applications for construction permits, when necessary, in an expeditious manner. To that end, the City will endeavor to make a good faith effort to complete the processing of such applications within ten (10) business days unless the application is incomplete, requires further information or raises additional questions. If additional information is needed or questions occur, the City will make a good faith effort to complete each additional review within five (5) business days. The City will not unreasonably delay the processing of permits.

G. QC, at its own cost, shall maintain a local point of contact, available on a twenty-four hour per day, seven days a week basis, with a local or toll free number for the conduct, matters and information concerning this Agreement. QC shall comply with all locate requirements set forth in applicable law. QC contact information is provided below, which QC shall ensure is updated.

24/7 Contact:

Business and Consumer (Local Installation and Repair)
James Illicete, Area Plant Supervisor, 719-377-8714
Cory Skoumal, Area Operations Manager, 402-422-5828

Engineering and Construction:

Scott Wilson, Local Engineer, 402-592-6011
Brent Lamb, Engineering Manager, 402-572-5899
Aaron Krebs, Engineering Director, 402-5218-1948

H. City may, in case of fire, disaster, or other emergency situations, as reasonably determined by City, cut or move any of the wires, cables, amplifiers, or other parts of the Cable System and Facilities, in which event the City shall not, except in the case of gross negligence or willful misconduct, incur any liability to QC. When possible, QC shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of Cable System and Facilities shall be borne by QC, except in the case of gross negligence or willful misconduct of the City, its employees or contractors. Neither the City nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to QC for any liability as a result of or in connection with the protection, movement, removal, alteration, or relocation of any part of the Cable System and Facilities by or on behalf of QC or the City in connection with any emergency, public work, public improvement, alteration, or relocation of any municipal structure, any change in the grade or line of any Street, as provided in this Agreement, except in case of gross negligence or willful misconduct of the City, its employees or contractors.

I. QC shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting.

J. All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the Cable System and Facilities shall be performed in a safe, thorough and reliable manner using materials of good and durable quality, and shall meet all applicable local codes and ordinances as they exist at the time the work is performed. If, at any time, it is reasonably determined by the City or any other agency or authority of the competent jurisdiction that any part of the Cable System and Facilities, including, without limitation to, any means used to distribute signals over or within the Cable System and Facilities, is harmful to the health or safety of any person, then QC shall, at its own cost and expense, promptly correct such conditions.

K. Until the termination of this Agreement and satisfaction in full by QC of its obligations under this Agreement, QC agrees that it will maintain all of the material properties, assets and equipment of the Cable System and Facilities, and all such items added in connection with any upgrade in good repair and proper working order and condition throughout the term of this Agreement.

Section 6 – Maps and Plats

QC shall make available for inspection by the City true and accurate maps or plats of all existing and proposed installations and update the same at reasonable intervals so that City will at all times have access to a current set of such maps and plats.

Section 7- 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 policies, 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 consistent with applicable law. As such, QC understands that the City reserves its right and duty to adopt changes to the Policy, attached as Exhibit A, from time to time as deemed necessary for the best interests of the City and consistent with applicable law.

Section 8 - Coordination and Conduit/Pole Sharing

A. 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 leases and permits and other interests needing to locate or maintain the Cable System and 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, QC agrees, wherever reasonably feasible, that it shall cooperate with the City in placing conduit within the Rights-of-way and in sharing, consistent with regulatory and contractual requirements, unused space within underground conduits owned by QC, and upon any poles or other above ground Facilities.

B. For any new Cable System and Facilities installation or expansion, QC shall place the Cable System lines underground in localities where both telephone and power lines are underground, unless otherwise agreed upon by the City.

C. For existing Facilities, QC shall replace aerial Facilities with telephone and power utilities when both types of utilities are lawfully required by the City to be placed underground. At no time shall the Cable System be the only aerial facility, unless otherwise agreed upon by the City. Where undergrounding is required, QC shall have the option of sharing or not sharing in utility trenches. Nothing in this section shall preclude QC from placing active components, including pedestals and power supplies, above ground in areas where Facilities are otherwise required to be underground.

D. At any time that the City or QC intends to install new underground conduit or replace existing underground conduit in the City's controlled Rights-of-way, each Party shall endeavor, whenever reasonably feasible, to provide the other Party with forty-five (45) days advance written notice in order to permit the additional contemporaneous installation of conduit upon terms and conditions acceptable to both Parties. If either Party desires additional conduit

installed, it will so notify the other Party. The Party providing such notice shall be responsible for the additional incremental expense for installing such additional conduit.

Section 9 - Special Indemnification Arising from Cable System and Facilities

A. QC shall install, construct, maintain and operate its Cable System and Facilities in a safe and reliable manner providing reasonable protection against injury or damage to any and all persons or property. QC specifically agrees to indemnify, defend and hold the City harmless from all claims, costs, demands, suits, costs of defense and judgments which arise from, in whole or in part, QC's acts or omissions pursuant to this Agreement, and from all damages or penalties arising out of the installation, construction, operation, or maintenance of QC's Cable System and Facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Agreement, except to the extent such damages or penalties result from the gross negligence, intentional or willful and wanton misconduct of the City or agent thereof. The City shall not be liable for, and QC shall indemnify defend and hold the City harmless from all costs, damages and claims which arise from or relate to delay by QC in performing its obligations hereunder, for any cause whatsoever, except for the gross negligence, intentional or willful and wanton misconduct of the City. Neither Party shall be liable for those events contemplated in Section 18(N) of this Agreement. QC also hereby agrees to pay all reasonable expenses of the City incurred by the City in defending itself with regard to any such damages, claims or penalties, including all out-of-pocket expenses, reasonable attorney's fees, and the reasonable value of any services rendered by the City Attorney, their assistants or sub-consultants, or any employees of the City to the extent QC has an obligation to indemnify the City to the extent QC has an obligation to indemnify the City under this Section.

B. The City shall provide notice to QC of the pendency of any claim or action against the City arising out of the operations of QC, the exercise by QC of its rights under this Agreement or the performance thereof by QC. QC shall thereafter be required to appear and defend any such claim or action to the extent liable under this Section. Except as otherwise provided herein, nothing herein stated shall limit QC's obligation of full indemnification of the City hereunder.

Section 10 - Insurance and Bond

A. Prior to commencement of any installation of QC's Cable System and Facilities under this Agreement, QC shall procure and thereafter continuously maintain, for as long as this Agreement remains in effect, at QC's sole expense, Commercial General Liability ("CGL") insurance covering bodily injury including death and property damage liability as provided in Section D(2) of the Policy; provided, however, such coverage shall be in the minimum amount of no less than at least Five Million Dollars (\$5,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) for any person for any number of claims arising out of a single occurrence. This Agreement shall be defined as an insured contract.

B. The policy shall identify the City as an additional insured, shall waive subrogation of claims against the City as an additional insured, for losses caused by and to the extent of Centurylink's liability, 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 the Cable System and Facilities, which evidences compliance with the Policy requirements. QC shall provide thirty (30) days written notice to City prior to cancellation or material change, causing QC to be in breach of the requirements herein, of any insurance referred to therein. In the event the certificate states that it confers no rights upon the certificate holder, the City may request to review a complete copy of the policy including all declarations and endorsements at a reasonable local location agreed upon by the Parties.

C. Performance Bond. QC shall provide a bond in compliance with Section D of the Policy. Such bond shall be for a term of ten (10) years to run concurrently with the term of this Agreement, and upon renewal(s) of this Agreement such bond shall be renewed by QC for subsequent period(s) which shall run concurrently with and for the full term of the renewed Agreement.

Section 11 - Term

The term of this Agreement shall be for a period of ten (10) years from and after the Effective Date of the Agreement, unless sooner terminated as provided in this Agreement. This Agreement may be renewed as provided by the City.

Section 12 - Indemnification and Representations

A. Mutual Indemnity. QC shall indemnify, defend and hold harmless the City, its officers, employees, elected officials, boards, commissions and any other legal entity affiliated with the City from and against all Claims brought by third parties which any such indemnified Party is required to pay or to assume which have resulted from QC's installation, maintenance or operation of its Cable System and Facilities upon or within certain streets and public Rights-of-way within the corporate boundaries of the City, or 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. Additionally, the City shall indemnify, defend and hold harmless QC, its officers and employees, against all Claims brought by third parties which any such indemnified Party is required to pay or to assume which have resulted from City's 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.

B. The City's 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 the City under or by virtue of federal or state law.

C. Notice and Defense of Third-Party Actions. Each Party entitled to indemnification under this Section 13 (the "Indemnified Party") shall give prompt written notice to the Party that is obligated to provide such indemnification (the Indemnifying Party") of the commencement or

assertion of any Claim by a third party (collectively, a "third-party action") in respect of which the 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 Section 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:

(1) 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; and

(2) 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; and

(3) 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

(4) 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 (a) as to which the Indemnifying Party fails to assume the defense within a reasonable length of time or (b) 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.

D. Cooperation. The Parties shall cooperate with each other in the defense of any third-party action that is the subject of this Section 13 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.

E. 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:

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

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

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

(4) 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.

Section 13 - Remedies, Termination, Removal

A. 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: (1) specific performance or injunctive relief, (2) monetary damages, and (3) 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, excluding attorney's fees and expert witness fees.

B. 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.

Section 14 - Delays and Limitation of Liability

A. Delays. Under no circumstances shall the City ever be liable for any delay in restoring any service or any operational aspect of QC's Cable System containing such Cable System and Facilities, which have been subjected to an outage, interference or interruption, whatever the cause of such outage, interference or interruption, unless due to gross negligence, willful nonfeasance or willful misfeasance of the City or agent acting on behalf of the City.

B. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall the City be liable to QC or any agent of QC 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 QC's customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by the City or agent acting on behalf of the City, 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 may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

Section 15- 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 Clerk City of La Vista, Nebraska 8116 Park View Boulevard La Vista, NE 68128
with a copy to:	Thomas McKeon Fitzgerald, Schorr, Barmettler & Brennan, PC, LLO 200 Regency One 10050 Regency Circle Omaha, NE 68114
If to QC:	Qwest Corporation Legal Department Attention: Network Attorney 1801 California St, Ste 900 Denver, CO 80202

Section 16 - 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 to this Agreement.

Section 17 - Signatures

The persons signing this Agreement on behalf of QC represent and warrant that such persons and QC have the requisite power and authority to enter into, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of QC enforceable against QC in accordance with its terms.

Section 18 - Miscellaneous Provisions

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

B. 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.

C. 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 QC and the City shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

D. Independent Contractors. In all matters pertaining to this Agreement, the relationship of QC and the City shall be that of independent contractors, and neither QC nor the City 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 QC and the 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.

E. 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.

F. 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. Nothing herein shall be deemed a waiver of either Party's rights to challenge any provision of this Agreement that is contrary to applicable federal or state law.

G. 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 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.

H. Survival. The obligations of the Parties under Sections 4, 5, 8, 9, 12 and 16 shall survive any termination of this Agreement.

I. Headings. Section 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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 Cable System and Facilities, or 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 subdivisions 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 Cable System and Facilities.

IN WITNESS WHEREOF, this Agreement shall take effect upon the last date it is signed as indicated below.

CITY OF LA VISTA, Nebraska,
a Municipal Corporation

Date

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, City Clerk

(SEAL)

Date

CABLE SYSTEM PROVIDER:
QWEST CORPORATION d/b/a CenturyLink

By: _____
Daniel R. Pate, VP/GM – Nebraska Market

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 201____ before me, Notary, personally appeared Daniel R. Pate, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity on behalf of Qwest Corporation, and that by his signature on the instrument executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

EXHIBIT A

STATEMENT OF POLICY AND STANDARD SPECIFICATIONS FOR COMMUNICATIONS FACILITIES ON CITY PROPERTY (Revised December, 2011)

As used in this document, "Permittee" includes the permittee issued a permit to which a statement of policy and specifications set forth in this document are applicable by agreement between the City of La Vista, Nebraska and the permittee, as well as any successor in interest and/or assignee of such permittee.

SECTION A — PERMIT REQUIRED

No person shall use any space above, on, or beneath the surface of any street, alley, sidewalk or other public ground within the City of La Vista for the installation, operation and maintenance of any underground fiber optic cable, coaxial cable, or any other communication cable, line, facility or appurtenance, unless such person has received a permit therefor, granted by agreement approved by resolution of the City Council or as otherwise provided herein. This policy and these specifications shall not apply to any cable installed or operated by the holder of any City franchise for the provision of telephone, cable television, or communications service to the inhabitants of the City as described in such franchise.

SECTION B — APPLICATION FOR PERMIT

- (1) Application for such permit shall be made to the Permits and Inspection Division of the Community Development Department of the City, and such application shall be in writing, stating specifically the space desired, its length, breadth and depth, the streets, alleys, sidewalks or other public spaces intended to be used, the use intended to be made thereof, a description of the user(s) if the facility is not to be available to the general public, a description of all users if any conduit is to be shared by a number of users and the carrying capacity and diameter of the cable or other facilities installed or being installed. The Permits and Inspection Division shall forward the application to the Public Works Department for review and comment. The Permits and Inspection Division and/or the Public Works Department may request such additional information as they deem appropriate for their determination or that of the City Council with reference to such application. All such applications and requests for which there is no agreement currently in effect conforming to this statement of policy and these specifications shall be referred to the City Council for approval of an agreement by resolutions prior to the granting of a permit. Other permits (for which such an agreement is currently in effect) may be granted by the Permits and Inspection Division with the approval of the Public Works Department.
- (2) Following initial application and discussions with the Permits and Inspection Division and/or the Public Works Department concerning the placement of such cable, line or facility, and related appurtenances, the applicant shall supply accurate drawings under seal of a Nebraska-licensed professional engineer produced to a scale as specified by the City representatives during discussion and review of the initial application. The plans shall include a plan and profile of all actual and proposed routes, with right-of-way lines and pavement lines shown. Such plans must show typical sections for pavement cuts and crossings, with specific details for any conflicts with other utility structures and conduits.

(3) Within thirty days after completion of the construction and installation work, the Permittee shall provide as-built construction drawings, signed and certified by a Nebraska-licensed professional engineer, to the Public Works Department. In that connection, one set of paper prints shall be provided, along with a digital copy on electronic storage media and with each sheet being a .pdf file. In addition, ArcGIS or AutoCAD files shall be provided to the Public Works Department on electronic storage media so that city-wide maps may be kept current. Updated route maps, required drawings, and as-built construction drawings must be provided to the Public Works Department whenever a change is made to the approved cable, line, or facility, and related appurtenances placement.

SECTION C — CONSTRUCTION SPECIFICATIONS

(1) The work shall be constructed in accordance with plans and specifications approved by the Public Works Department, which approval shall be granted in a competitively neutral and non-discriminatory manner. All excavations and pavement replacements in public streets shall comply with Chapter 93 of the La Vista Municipal Code. Where cable or conduit is located beneath the pavement of major traffic streets, or as directed in writing by the Public Works Department, the minimum depth from the top of the cable or conduit to the top surface of the street shall be not less than thirty inches. Cable or conduit buried beneath residential streets shall have a minimum depth below the top surface of the street of twenty-four inches, unless a greater depth is directed by the Public Works Department in writing. In no instances shall cable or conduit be buried to a depth of less than twenty-four inches. Pull boxes and other appurtenances shallower than the depths above specified shall be clearly shown on the completed plans and as-built construction drawings covering the installation work.

(2) All land surfaces and all pavement shall be restored to the same or similar conditions existing prior to Permittee's construction. All established lawns which have been disturbed by the installation shall be re-sodded and all other earthen surfaces shall be seeded unless otherwise specified in the permit.

(3) All cable buried beneath public streets must be encased in a protective sheath strong enough to avoid damage from the first accidental contact with hand tools. All pavement cuts must be completed in accord with current City ordinances and specifications.

SECTION D — BOND, INSURANCE AND PUBLIC LIABILITY

(1) Prior to commencing any construction or installation activity under a permit, Permittee shall file with the City Engineer a continuing performance bond guaranteeing Permittee's performance of the agreement and compliance with the conditions of the agreement and of the permit. Such bond shall be in the sum of Fifty Thousand Dollars (\$50,000.00), such greater sum as may be reasonably proportionate to the size and scope of the work to be performed within the City's rights-of-way and the potential loss(es) or damage(s) the City may sustain if Permittee fails to perform the agreement and comply with the conditions of the agreement and of the permit. Such bond shall be conditioned that Permittee:

(A) shall faithfully perform the agreement and comply with all conditions of the agreement and of the permit;

(B) shall save and keep the City free and harmless from any and all loss, liability and damage, and claims for damages, arising from or out of the use of the space

subject to the permit or arising from or out of Permittee's activities and operations under the agreement and permit, except such claims as may arise based solely upon the City's own gross negligence or intentional misconduct;

- (C) shall conduct operations and activities under the agreement and permit such that the street(s), alley(s), sidewalk(s) and other public ground(s) affected by Permittee's operations under the agreement and permit shall at all times after the completion of such operations be safe for public use;
- (D) shall save and keep the City free and harmless from any and all loss, liability or damages, and claims for damages, arising from or growing out of the granting of such permit, except such claims as may arise based solely upon the City's own gross negligence or intentional misconduct;
- (E) will remove, at the conclusion of the term of the agreement and at Permittee's own cost, any cable, conduit, equipment, and other facility buried or installed by Permittee, to the extent such removal is requested by the City, at the sole expense of Permittee or its successors or assigns, and after such removal restore all land surfaces and all pavement as specified more fully in SECTION C(2), above;
- (F) shall faithfully comply with and observe all of the terms and conditions of this statement of policy and of these specifications, and of the conditions and provisions of the La Vista Municipal Code; and
- (G) shall promptly and fully pay, when due, any amounts coming due to the City or others under the agreement or permit.

Such bond by its terms shall remain in effect through the end of the term of the agreement or until Permittee is no longer operating its telecommunications facilities within the City, whichever is later. The bond shall be written by a surety company or companies authorized to transact a surety business in Nebraska, and the bond and surety(ies) must be approved by the City Engineer before the permit shall become effective. The Permittee and the owners (from time to time) of the permitted facility shall be jointly and severally liable to the City for the performance of all of the conditions of the bond. Whenever the City Engineer shall be of the opinion that the sum or the surety on the bond given in connection with the permit has become insufficient and shall so declare in writing sent by regular U.S. Mail to Permittee or his, her or its successor or assign, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City Engineer.

- (2) The Permittee, or his, her or its successor or assign, shall at all times have in full force and effect, and provide to the City Engineer, certificates of insurance demonstrating insurance coverages having limits of liability of not less than the following amounts:
 - (A) Comprehensive General Liability Insurance: Limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The City of La Vista shall be named as an Additional Insured on such coverages on a primary and non-contributory basis.
 - (B) Automobile Liability Insurance: Limits of not less than \$2,000,000 Combined Single Limit (CSL) per accident, with coverage applying to and regarding all Owned, Hired, and Non-Owned motor vehicles.

- (C) Workers' Compensation Insurance: Limits: Statutory coverage for each State in which the work and any portion of the work is located or performed.
- (D) Employer's Liability Insurance: Limits: \$100,000 each Accident; \$100,000 Disease (per person); \$500,000 Disease (policy limit).

The Comprehensive General Liability Insurance coverage described in Section D(2)(A) above and the Automotive Liability Insurance coverage described in Section D(2)(B) above may each be provided by one or more policies of insurance, including umbrella liability policies, which in combination are sufficient to provide the minimum limit of liability coverage specified.

All such policies and certificates of insurance shall be issued by companies authorized to issue such policies in the State of Nebraska, shall be subject to approval by the City Engineer prior to the commencement of any construction or installation activity under a permit, and shall provide that the policy shall not be cancelled or terminated except upon filing by the insurer with the City Engineer a written notice of cancellation or termination at least thirty (30) days prior to the effective date of such cancellation or termination. Any cancellation, termination, or lapse of a required insurance coverage shall automatically revoke any permit issued, but the Director of Public Works may reinstate such permit if satisfactory certificate(s) of insurance is/are provided within thirty (30) days.

SECTION E — INTERFERENCE WITH OTHER PUBLIC FACILITIES, RELOCATION, IDENTIFICATION OF COMMUNICATIONS CABLE

- (1) No person, whether permitted under this document or otherwise, shall ever use the space above, on or beneath any street, alley, sidewalk or public ground of the City in such manner as to interfere with any traffic control or energy cable, sewer, gas or water installation, or any other public facility or utility lawfully located above, on, or beneath such street, alley, sidewalk or other public space, except upon consent of the City specifically granted in the permit. Whenever any applicant or Permittee is given permission to relocate any existing public facility, such relocation shall be entirely at the cost and expense of the applicant or Permittee. All such relocation work shall be subject to the approval of the City of La Vista or other public entity controlling such public facility or utility, and all such work shall be done promptly in accordance with the directions of the Public Works Department so as to minimize the interruption of the public's use of such facilities.
- (2) All work undertaken by the applicant or Permittee that requires inspection by the City, as specified by law or ordinance or in the permit or agreement, shall be performed subject to the requirement that the City be fully reimbursed for its reasonable and documented inspection costs, whether the same are incurred during the initial installation, during the relocation of Permittee's facilities or facilities belonging to the City or any other utility service, or during maintenance or repair work by Permittee.
- (3) All permits governed by these specifications are granted subject to the express requirement and condition that whenever the City of La Vista, the State of Nebraska, the County of Sarpy, any other public body, Omaha Public Power District, Metropolitan Utilities District, any other publicly-owned entity, Black Hills Energy, or any holder of any franchise from the City, needs or desires to perform work in proximity to the facilities of Permittee, Permittee shall relocate or otherwise safeguard its facilities within a reasonable time, not to exceed sixty (60) days, after written request for the same, in order to reasonably accommodate such work. If Permittee fails to

relocate or safeguard same within a reasonable time following such request, then the City of La Vista shall have the right to relocate or allow relocation of Permittee's facility(ies) and to assess and collect from Permittee the reasonable and documented cost of such relocation.

- (4) At its own cost, Permittee shall appoint a local agent, who shall be available on a twenty-four hours per day, seven days per week basis, to provide to the City, any public entity, or any other person permitted to do work in a City right-of-way, detailed and accurate information concerning the location (whether in plan, section or profile, or any combination of the same) of the Permittee's cable, lines, appurtenances or other facilities. This requirement may be satisfied by the Permittee's utilization of a local utility locating service maintained by a third party or any other local agency able to provide such information. Permittee shall be a member of the Underground Digger's Hotline system.
- (5) Permittee shall at all times be solely responsible for injuries and damage to its cable, lines, appurtenances and other facilities, caused by any party due to any inaccuracy in the information provided by Permittee or its agent(s) with respect to the location of such cable, lines, appurtenances, or other facilities. The City of La Vista and other parties working on public property shall be responsible for damage to the Permittee's cable, lines, appurtenances, and other facilities only if and to the extent that such damage results from intentional damage or willful disregard of the cable, lines, appurtenances or other facilities of the Permittee.

SECTION F — REVOCATION OF PERMIT; REMOVAL OF FACILITIES

- (1) If Permittee
 - (a) fails to make any required payment to the City within thirty (30) days after the due date, or
 - (b) fails or neglects to comply with any material provision of this statement of policy, these specifications, the permit, the agreement, or any other provision of the La Vista Municipal Code applicable to the permit or use and occupancy of City right-of-way,

and if in either event Permittee fails to cure such breach within thirty (30) days after the City Engineer has mailed written notice of such breach to Permittee, then the City Council may revoke the permit issued to Permittee.
- (2) Upon revocation of the permit, Permittee shall forthwith either remove or abandon in place, as directed by the City Engineer, the cable, lines, facilities, and/or appurtenances for which the permit was granted; *provided, however*, that cable buried directly (i.e., not buried in conduit) may be abandoned in place at the option of Permittee. If pursuant to the foregoing, the City Engineer directs Permittee to remove Permittee's cable, lines, facilities and/or appurtenances, then within a reasonable time and at its own cost, Permittee shall remove as directed any cable, lines, facilities, and/or appurtenances buried or installed by Permittee, and after such removal Permittee shall restore all land surfaces and all pavement as specified more fully in SECTION C(2) above. Cable, lines, facilities, and/or appurtenances that are not removed, with the permission of or at the direction of the City Engineer, shall become the property of the City upon the City Engineer's certification that the Permittee has complied with all of the City Engineer's directives concerning removal or abandonment in place of the specific segment of cable, lines, facilities, and/or appurtenances involved. If Permittee fails or refuses to conclude removal or abandonment in place as directed by the City, and restoration as specified more fully

in SECTION C(2), within six (6) months after revocation of the permit under this section, then the City may cause such work to be performed and the cost of such work shall be paid by Permittee to the City on demand, and until paid such cost shall be a lien against and upon call cable, lines, facilities, appurtenances, and other property of the Permittee located within the corporate limits of the City.

- (3) If the City Council determines that right-of-way or other public ground space for which the permit was granted is needed for other public use and that no relocation within the specific right-of-way or public ground is available as a reasonably feasible alternative space, then Permittee's rights under the permit may be transferred, by co-operation between the City and the Permittee, and to the extent reasonably possible, to another specific nearby right-of-way. Such relocation work shall be accomplished by the permit holder at its own cost within the time frame specified in Section E(3), above.

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

- (1) When Permittee is making private use of the installed cable, lines facilities, and appurtenances, Permittee shall pay to the City an annual rental for the use and occupancy of the space beneath public streets, alleys, sidewalks or other public grounds occupied by such cable, lines, facilities, and appurtenances, which rental shall be Two Dollars (\$2.00) per lineal foot of space occupied underneath the public streets, alleys, sidewalks or other public grounds. So as to prevent expense to the public for such private use of right-of-way, and to fully compensate the public for all regulatory expenses resulting from such use, and in addition to the Permittee's obligation to pay for all inspection, relocation and facility location costs as specified above, Permittee shall promptly pay the City for all actual direct and indirect costs incurred by the City in providing barricading, traffic detour or warning signing or cautionary flagging not actually performed by Permittee and for all other actual direct and indirect expenses incurred by the City in regulating Permittee's use of public right-of-way pursuant to the permit and the agreement.
- (2) All payments becoming due under this document shall be made to the City of La Vista and shall be due and payable, in advance, on the first day of January of each year; *provided, however*, if the permit is issued after the first day of January, the amount of the initial rental payment shall be prorated from the date such permit is issued through December 31 of that same calendar year, and such initial rental payment shall be due and payable within ten days after the prorated rental amount due is certified to Permittee by the City Engineer. Any annual rental due (other than the rental due for any initial partial year) shall be due and payable on the first day of January each year. All rental not paid when due shall bear interest at the maximum rate of interest allowable by law in the State of Nebraska under such circumstances, or at any lesser rate of interest that may be specified in the permit.

SECTION H — COSTS TO BE PAID FOR PUBLIC USE PROVIDERS

- (1) If the Permittee is a communications company offering communication services to the general public for a fee and using the public space for such purposes, the rental fee stated in Section G above shall not apply. In lieu thereof, the City's occupation tax per Chapter 113 of the La Vista Municipal Code shall apply. Communications services shall be defined as services provided by the carrier that accommodate and enable the transmission, between or among points specified by the subscriber or user, of information or data of the subscriber's or user's choosing, without a change in the form or content of the information as sent or received. In addition to the occupation tax, Permittee shall promptly pay the City for all actual direct and indirect costs incurred by the City in

providing barricading, traffic detour, or warning signing and cautionary flagging not performed or provided by Permittee, and for all other actual direct and indirect expense incurred by the City in regulating Permittee's use of public right-of-way pursuant to the permit and the agreement.

SECTION I — CONFLICTS WITH PERMIT OR AGREEMENT

All terms and provisions of the agreement between the City and Permittee, of the permit issued to Permittee, and of this document, shall be enforced and applicable to the maximum extent possible. If, however, there is any conflict between or among such terms and provisions, then (1) the terms and provisions of the permit shall control over any conflicting terms in this document, and (2) the terms and provisions of the agreement shall control over any conflicting terms in the permit and/or this document.