

LICENSE AGREEMENT

Project Name: _____

Project Number: _____

This REVOCABLE LICENSE ("License"), made and entered into this _____ day of _____, 20____, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City") as licensor and _____, hereinafter collectively referred to as the "Licensee") as licensee.

WITNESSETH, that in consideration of the mutual obligations and covenants herein, the parties hereto do mutually agree as follows:

1. Recital. The Licensee is the owner of certain real property ("Licensee's Property") located at _____, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information) _____

The City is the owner of a certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within Licensee's Property, and more particularly described in a certain Dedication Deed and known as:

If the City's Property is an easement, then give legal description and filing information:

2 License. Subject to the terms and conditions of this License, the City licenses Licensee to construct, install, operate, maintain, replace, and remove _____ (hereinafter referred to as the "Facility") within the City's Property at the following location, as more particularly shown on the drawing which is attached hereto as **Exhibit A** and made a part of this License:

Location: _____

_____ (hereinafter referred to as the "Location").

County Clerk's Recording Label

3. Use. The Licensee shall use the Facility for the purpose described above and will not use it for any other purpose whatsoever without first obtaining the written consent of the City

Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation on any part of the rights-of-way or to fence the rights-of-way or any part thereof.

4. Compensation. As compensation for this License, the Licensee shall pay the City a one time administrative fee of \$500.00 plus the sum of _____ Dollars (\$ _____) for each year this License is in effect (hereinafter referred to as the "Annual Fee").

The Annual Fee shall be paid to the City at the office of the City Treasurer upon execution of this License, and by the same month and day each year thereafter for the term of this License.

5. Term, Termination and Removal. This License will remain in effect for a period of ten (10) years from the date of execution of this License (hereinafter referred to as the "Term"), unless terminated and revoked as a result of:

- a. The Licensee's breach of term of this License; or
- b. The City's giving the Licensee written notice thirty (30) days in advance of termination; or
- c. The Licensee's giving the City written notice thirty (30) days in advance of termination; or
- d. An order of a court of competent jurisdiction.

Upon termination of this License and any renewal hereof, the Licensee shall abandon the use of the Facility, and shall remove the Facility and restore the City's Property as nearly as possible to the condition it was in prior to removal, all at the sole expense of the Licensee.

If, after termination and within thirty (30) days after being directed to do so by the City, the Licensee fails to remove the Facility and restore the City's Property, the City may perform the work and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such work.

Termination of this License for any reason shall not release the Licensee from any liability or obligation relating to the installation, operation, maintenance, or removal of the Facility or any other term of this License.

6. Renewal of License. If both the City and the Licensee wish to extend the Term of this License, then, before the expiration of the Term, the City and the Licensee shall enter into good faith negotiations, the object of which will be to agree upon the terms of a renewal of this License. The agreement of the City shall not be withheld unreasonably. If an agreement is reached, all terms, including the agreed-upon consideration shall be reduced to a writing signed by both parties.

7. Location, Installation, Maintenance and Removal. At its own expense, the Licensee shall install and construct the Facility of such material, and in a manner that will not at any time be a source of danger to, or interfere with the City's present or future use of the City's Property, or the use of the City's Property by any utility presently franchised by the City, or interfere with its use as a public way. If during installation it becomes evident that the Licensee's proposed installation will interfere with existing City installations or any existing underground installations, then the Licensee shall modify its installation within the Location to avoid the conflict, after obtaining the City's approval for the change, at the sole expense of the Licensee.

The Facility shall be constructed, installed, and maintained in conformity with plans and specifications which must be approved in advance by the City and which are made a part of this License by reference. Before performing any construction, the Licensee's contractors shall obtain all permits and insurance required by the City for work within the right-of-way and will pay all fees and reimburse the City for all reasonable and necessary costs incurred in inspecting and supervising the work performed.

After installation of the Facility, the Licensee shall back-fill, compact, repair and repave all resulting trenches, curbs, gutters and pavement to the satisfaction of the City, in accordance with the City of Albuquerque Standard Specifications for Public Works Construction, 1986, as amended.

If, in the judgment of the City, the Licensee at any time fails to perform its obligations under this section, the City, at the City's option, may perform whatever work the City deems necessary for the public safety, health and welfare, and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of performing such work. However, the City is not required to perform such work, and any failure by the City to perform the Licensee's obligations shall not release the Licensee from liability for any loss or damage caused by the Licensee's failure to perform its obligations.

Installation, maintenance, and removal of the Facility shall be accomplished in a manner which will not unreasonably impede City access on the Route or impede its use for operation and maintenance of infrastructure, as determined by the City. The timing and manner of such construction, maintenance, and removal shall be done in compliance with the City's requirements.

If the Facility or any part thereof is the cause of an emergency condition, and the City determines that the situation makes it unreasonable to notify the Licensee or await action by the Licensee, the City may take over whatever actions it deems necessary to remedy the emergency situation at the sole expense of the Licensee, which will reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such actions.

8. As-Builts. Upon completion of the construction and installation of the Facility, the Licensee shall promptly provide the City with one set of reproducible as-built, record drawings, reflecting construction and installation as actually accomplished.

9. Location Markers and Marking. As deemed necessary the Licensee shall furnish, install, and place signs required by the City to give notice and location of the Facility.

Licensee shall install permanent markers situated so as not to impede use of the Route by the City, members of the public or currently franchised utilities on each side of the Route where the Facility crosses the Route. The permanent markers shall indicate the location of the Facility, the name and address of Licensee, and a telephone number to contact for information regarding the Facility. Licensee shall conduct periodic inspections of the markers to insure that such markers are legible and in place as required herein.

The Licensee shall provide access to the location of the Facility whenever requested to do so by the City, and franchised utility or any licensed contractor excavating along the route.

10. Insurance. During the Term of this License, including renewals, if any, the Licensee shall obtain and maintain liability insurance in an amount of not less than \$1,000,000.00 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to the construction, installation, operation, maintenance replacement, removal or other activity related to the Facility. The insurance policy shall provide coverage per occurrence and shall state the project name and project number. The insurance policy shall name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured. Any cancellation provision must provide that if the policy is canceled prior to the expiration date of the License, materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, Attention: City Engineer. A certificate of insurance in compliance with the above must be furnished to the City prior to the City's execution of this License.

11. Damages and Indemnity. The Licensee shall repair or pay for all actual damages done to the City Property and improvements, or to the improvements of the City's Tenants caused by Licensee's Operations.

The Licensee shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Licensee agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the Licensee, its agents, representatives, contractors or subcontractors or arising from the failure of the Licensee, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

This indemnity shall not apply to any liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of the City, or the agents or employees of the City.

12. City Use. The City reserves the right to place along, under, across and over the Route and the Facility as many roads, streets, sidewalks, passageways, fire alarms, electric light and power lines, waterlines, storm drains, sanitary sewer lines, gas lines, telephone poles and telephone lines, and other utilities and facilities as the City may desire.

13. Interference with City. Whenever, after the Licensee installs the Facility, it is the City's good faith, reasonable determination that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, and the Facility interferes with the City's reasonable use of the City's Property, the Licensee shall immediately relocate the Facility to another location approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and the Facility interferes with the City's reasonable use of its City's Property, the City will provide written notice to the Licensee that relocation of the Facility is required and the Licensee shall relocate the Facility within sixty (60) days of notice to the new location as approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

14. Interference with Utility. Whenever, after the Licensee installs the Facility, it is determined that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, the Facility interferes with the reasonable use of the City's Property by a utility franchised by the City prior to execution of this License, the Licensee shall immediately relocate the facility to a location within the Route approved in advance by the City. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and it is alleged by a utility franchised by the City prior to the execution of this License that the Facility interferes with the previously-franchised utility's use of the City's Property, the Licensee shall make a good faith effort to negotiate with the previously-franchised utility to resolve any conflict. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

15. Installation by Third Party. If any road, street, sidewalk, passageway, fire alarm, electric light or power line, waterline, storm drain, sanitary sewer line, gas line, telephone pole, telephone line or other utility, appurtenances or facility is placed along or across the Facility by any entity other than the City, and the construction requires the Licensee to relocate the Facility, then that entity and the Licensee shall determine between themselves who will pay the cost of relocation and the restoration of the surface. None of the related costs shall be paid by the City.

16. Entire Agreement. This License contains the entire agreement of the parties regarding the Facility and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

17. Changes. Changes to this License are not binding unless made in writing, signed by both parties.

18. Captions. The captions to the sections or paragraphs of this License are not part of this License and will not affect the meaning or construction of any of its provisions.

19. Binding Effect. This License is binding upon and inures to the benefit of the successors and/or assigns of the parties.

20. Compliance with Laws. The Licensee and its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person. The Licensee's attention is specifically drawn to NMSA 1978 §§ 62-14-1 et. seq., regarding excavation damage pipelines and underground utility lines.

21. Applicable Law. This License is governed by and construed and enforced in accordance with the laws of the State of New Mexico.

22. Construction and Severability. If any part of this License is held to be invalid or unenforceable, the remainder of this License will remain valid and enforceable if the remainder of the License is reasonably capable of completion.

23. Assignment. The Licensee shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City which consent shall not be unreasonably withheld.

24. Notice. For purposes of giving formal written notice to the Licensee, the Licensee's address is:

Phone No.: _____

For purposes of giving formal, written notice of the City, the City's address is:

Mayor
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Copies of any notices to the City must also be given to:

Director, Planning Department
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete when deposited in the United States Mail, postage paid, and addressed as required in this section. Notice of change of address will be given in the same manner as required by this section.

25. Approval Required. This License Agreement shall not become effective or binding until approved by the City's Engineer.

26. Run with the Property. This Agreement shall be binding upon Licensee's Property, its successors and assigns and shall run with title to the Property.

LICENSEE: _____

CITY OF ALBUQUERQUE:

By [signature]: _____

By: _____

Name [print]: _____

Richard Dourte, City Engineer

Title: _____

Dated: _____

Dated: _____

LICENSEE NOTARY

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this ____ day of _____,
20__ by [name of person:] _____, [title or capacity,
for instance, "President", "General Partner" or "Managing Member":] _____
on behalf of [name of Licensee:] _____.

(SEAL)

Notary Public

My Commission Expires: _____

CITY NOTARY

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this ____ day of _____, 20 ____,
by Richard Dourte, City Engineer, on behalf of the City of Albuquerque, New Mexico a
municipal corporation

(SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT A
(TO BE ATTACHED)