

“EXHIBIT A”

Article 24. Utilization of the Public Right of Way

Sec. 10-2401. FINDINGS AND PURPOSE.

- A. The city council finds that it is necessary to achieve a balance between the telecommunications needs of the city's citizens, and the orderly, safe, and aesthetic use of facilities by telecommunications companies. Sometimes, federal or state law encourage the placement of such small wireless facilities in public rights of way.
- B. The city is responsible for the safe and aesthetic maintenance of its public rights of way, for the benefit of the public and for the protection of public health, safety, and welfare. Public rights of way are a finite resource and are subject to demands from competing interests. It is necessary to govern their use in a fair, safe, and orderly manner. This includes the proposed use of public right of way for telecommunications purposes. The city is also responsible for the processing and review of proposed telecommunications uses for properties other than public rights of way, with the objective of protecting public health, safety, and welfare.
- C. It is therefore appropriate to adopt these rules and regulations for the processing and review of any proposed telecommunications facility, both on public rights of way and on other properties.
- D. The purpose of this article is to adopt regulations governing the safe, responsible, and fair deployment telecommunications facilities on public rights of way and on other properties.

Sec. 10-2402. DEFINITIONS. For the purposes of this Article, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. The purpose of these provisions is to promote consistency and precision in the interpretation of this Article. The meanings and construction of words as set forth shall apply throughout this Article, unless where modified in a specific section or where the context of such words or phrases clearly indicates a different meaning or construction.

ACTION or TO ACT - The city's grant of an application or issuance of written decision denying an application.

ANTENNA - Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

APPLICABLE CODES - Any uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with federal or state law and to the extent such codes have been adopted by the city and are generally applicable in the city.

APPLICANT - Any person who submits an application and is a telecommunications provider.

APPLICATION - A written request submitted by an applicant to the city (1) for a permit to collocate small wireless facilities on an existing utility pole or support structure or (2) for a permit for approval for the installation, modification, or replacement of a utility pole to support the installation of a telecommunications facility.

AUTHORIZATION - Any approval that the city must issue under this article and applicable codes prior to the deployment of a telecommunications facility, along with any associated antenna equipment and support structure, including, but not limited to, zoning approval, building permit, and permit under this article.

CANTENNA - means a cylindrical shaped antenna.

COLLOCATE or COLLOCATION - To install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a support structure or utility pole. Collocate or collocation does not include the installation of a new utility pole or new support structure in the right-of-way.

COMMUNICATIONS FACILITY - Any set of equipment and network components including wires, cables, and associated facilities used by a cable operator as defined in 47 U.S.C. 522(5), as such section existed on January 1, 2019, a telecommunications carrier as defined in 47 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, or a wireless services provider, to provide communications services, including cable service as defined in 47 U.S.C. 153(8), as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153(24), as such section existed on January 1, 2019, wireless services, or other one-way or two-way communications service.

COMMUNICATIONS NETWORK - A network used to provide communications service.

COMMUNICATIONS SERVICE - A cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.

COMMUNICATIONS SERVICE PROVIDER - A cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections existed on January 1, 2019. Communications service provider includes a wireless provider.

DECORATIVE POLE - A utility pole that is owned, managed, or operated by or on behalf of the City, and which is specially designed and placed for aesthetic purposes.

DEPLOYMENT - Placement, construction, or modification of a telecommunications facility.

FCC - The Federal Communications Commission.

FEE - A one-time, nonrecurring charge, to be collected upon application.

HISTORIC DISTRICT - Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a(i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission codified at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.

INTERNET SERVICE PROVIDER – An Internet Service Provider (ISP) is a company that provides third parties access to the Internet via the equipment and telecommunication line access required to have a point-of-presence on the Internet for the geographic area served.

LAW - Any federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

MAKE-READY WORK - All work, as reasonably determined by the city, required to accommodate a telecommunications facility on a utility pole, and to comply with all the city's applicable codes. Such work includes, but is not limited to, modification or replacement of utility poles or lines, installation of guys and anchors, rearrangement of existing equipment, inspections, reasonable consultant fees or expenses, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), tree trimming (other than tree trimming performed for normal maintenance purposes), facility construction, or conduit system clearing, but does not include ordinary maintenance.

MICROWIRELESS FACILITY - Any telecommunications facility that is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height and with any exterior antenna no longer than eleven inches.

ORDINARY MAINTENANCE AND REPAIR - Inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a facility.

PERMIT - A written authorization, in electronic or hard copy format required by the city to perform an action, initiate, continue, or complete installation of a

telecommunications facility on an existing utility pole or an existing support structure, or to install, modify, or replace a utility pole to support installation of a telecommunications facility.

PERMITTEE - An applicant that has received a permit under this article, and its successors and assignees.

PERSON - An individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization.

PUBLIC POWER SUPPLIER - A public power district or any other governmental entity providing electric service. Public power supplier includes a municipal electric utility or a rural public power supplier.

RATE - A recurring charge, collected on a regular basis such as annually.

REPLACE or REPLACEMENT - In connection with an existing utility pole or support structure, to replace (or the replacement of) same with a new pole or structure in conformance with this article and any other applicable codes, in order to address limitations of the existing pole or structure to structurally support collocation of a telecommunications facility.

RIGHT OF WAY - The area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a freeway as defined in § 39-1302, the National System of Interstate and Defense Highways, or a private easement.

RURAL PUBLIC POWER SUPPLIER - A public power district, a public power and irrigation district, an electric cooperative, or an electric membership association, that does not provide electric service to any city of the metropolitan class, city of the primary class, or city of the first class.

SIGHT TRIANGLE ZONE - An area defined by a triangle with legs of 30 feet from the point at which the curbs or edges of two intersecting streets, private ways, trails, sidewalks, courts or an intersecting street, private way, trail, sidewalk or court and driveway meet.

SHOT CLOCK - The period of time in which the city is required to act on an application.

TELECOMMUNICATIONS FACILITY - Any wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty feet or less in height including the antennas or (b) are mounted on structures no more than ten percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more

than twenty-eight cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.

SUPPORT STRUCTURE - Any structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. "Support structure " does not include a utility pole.

TECHNICALLY FEASIBLE - By virtue of engineering or spectrum usage, the proposed placement for a telecommunications facility, or its design or site location, can be implemented without a reduction in the functionality of the telecommunications facility.

TELECOMMUNICATIONS – the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

TELECOMMUNICATIONS EQUIPMENT – Means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

TELECOMMUNICATIONS CARRIER – Any provider of telecommunications services.

UTILITY POLE or POLE - A pole located in the right-of-way that is used for wireline communications , lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-way. Utility pole does not include (1) support structures, (2) any transmission infrastructure owned or operated by a public power supplier or rural public power supplier, and (3) any distribution or communications infrastructure owned or operated by a rural public power supplier.

WIRELESS FACILITY - Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular power supply, and small back-up battery, regardless of technological configuration. Wireless facility includes small wireless facilities. "Wireless facility" does not include (a) the structure or improvements on, under, or within the equipment which is collocated, (b) coaxial or

fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to, or directly associated with, a particular antenna, or (c) a wireline backhaul facility.

WIRELESS INFRASTRUCTURE PROVIDER - Any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or support structures, but that is not a wireless services provider.

WIRELESS PROVIDER - A wireless services provider or a wireless infrastructure provider when acting as a co-applicant for a wireless services provider.

WIRELESS SERVICES - Any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.

WIRELESS SERVICES PROVIDER - A person who provides wireless services.

WIRELINE BACKHAUL FACILITY - An above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

Sec. 10-2403. APPLICABILITY. This article shall apply to all deployments of telecommunication facilities on rights of way or other public or private property within the city and its two mile extraterritorial jurisdiction, as amended or annexed from time to time, except as specifically excluded in this section or in this article. With respect to deployments on rights of way which are owned by another jurisdiction, the city shall coordinate its regulation under this article with such jurisdiction, by agreement or otherwise, so that only one of the jurisdictions regulates the same. This article shall not apply to any facility that was in existence and authorized by an agreement with the city as of the effective date of this article. Notwithstanding this section, the shot clock for an application shall be governed by this article or by an existing agreement, whichever provides for a shorter shot clock. Notwithstanding this section, application fees and yearly rates shall be governed by this article or by an existing agreement, whichever provides for smaller fees or rates. This article shall not apply to the design, engineering, construction, installation, or operation of any telecommunications facility located in the interior structure or upon the site of any college or university campus, stadium, or athletic facility not owned or controlled by the city, other than to comply with applicable codes. For an application submitted to the State of Nebraska regarding a location within right of way or other property owned or controlled by the State, to the extent that the State seeks a recommendation from the city regarding such application, the city shall apply the location and design standards of Section 10-2411. The applicant for a location on such State right of way or other property shall provide to the city a copy of the application submitted to the State, but no application fee shall be due. This article shall not apply to a micro wireless facility that is strung on a cable between existing utility poles in compliance with the National Electrical Safety Code, which may be installed, maintained and operated without permit or fees; provided, that standard rules regulating the

excavation or closing of sidewalks or streets shall apply to the same.

Sec. 10-2404. PERMIT REQUIRED. It shall be unlawful for any person to install, maintain, or operate a telecommunications facility, unless such person shall have previously obtained a permit under this article from the city expressly authorizing such telecommunications facility. It shall be unlawful for any person to collocate a telecommunications facility on or associated with an existing utility pole or support structure, unless such person shall have previously obtained a permit under this article from the city expressly authorizing the attachment or association of that specific telecommunications facility. It shall be unlawful for any person to construct, install, replace, maintain, or operate a new utility pole or support structure to which will be attached or associated a telecommunications facility, unless such person shall have previously obtained a permit under this article.

Sec. 10-2405. APPLICATION.

A. Form and content. Application for a permit under this article shall be filed with the Director of Public Works or his or her designee, on a form provided by that department. On or in addition to that form, an application shall include the following:

- (1) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the applicant.
- (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the application.
- (3) A description of the proposed work and the purposes and intent of the proposed telecommunications facility.
- (4) If applicable, written authorization from the owner of the utility pole or support structure on which the telecommunications facility will be placed or attached, if not the city. For a utility pole or support structure owned or controlled by the Omaha Public Power District or other owner, the applicant shall provide proof of approval of the specific plans by that District or owner.
- (5) Two (2) detailed construction drawings regarding the proposed telecommunications facility, and any associated equipment and utility pole or support structure. The drawings shall show the location, dimensions, elevations, equipment specifications, and attachment methods for the telecommunications facility, all equipment, and the utility pole or support structure.
- (6) To the extent the proposed telecommunications facility involves collocation on a utility pole or support structure, a structural report

performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation (or that the pole or support structure will be modified to meet structural requirements) in accordance with applicable codes.

(7) For any new above ground antenna equipment, a conceptual rendering of the said equipment, including accurate visual depictions and locations, if not included in the construction drawings.

(8) A full description of any make-ready work to be performed by the city in preparation for the proposed installation and use of the telecommunications facility, associated equipment and utility pole or support structure.

(9) The application fee as required by this article.

(10) Bond and certificate of insurance as required by this article.

(11) The application form shall include:

- (a) Language providing for the indemnification of the city by the applicant as required by this article; and
- (b) An attestation by the applicant that the telecommunications facility shall be operational for use by a wireless services provider within nine months after the later of the completion of all make-ready work or the permit issuance date, unless a delay is caused by lack of commercial power or communications transport facilities to the site, in which case the deadline shall be extended for up to nine months.
- (c) The applicant's signature on and submittal of the application shall constitute agreement to subsections (A) and (B) above.

B. Batching. An applicant may not apply for more than one telecommunication facilities in a single application. Application fees shall be paid for each telecommunications facility, as provided in this article.

C. Replacement or modification. A permittee shall be required to file an application and pay an application fee for the proposed replacement or modification of an existing telecommunications facility, antenna equipment, or associated utility pole or support structure. In such case, the application shall include two (2) updated drawings of the facilities showing such replacement or modification. Such proposed replacement or modification shall be reviewed and acted upon by the city as if it were an initial application. This section C does not apply to the replacement of a telecommunications facility with a telecommunications facility

that is substantially similar in weight or windage or the same size or smaller, in which case no permit, application, or fee is required.

D. Shot clock. The city shall act on a filed application, and all associated requests, on or before the expiration of the shot clock period.

(1) The shot clock period for an application is the sum of:

- (a) Ninety days, plus one additional period of ten business days if requested in writing by the city prior to the expiration of the ninety days, plus,
- (b) Such additional number of days of the tolling period, if any, pursuant to subsection (D)(2) below.

(2) Unless a written agreement between the applicant and the city provides otherwise, the tolling period for an application, if any, is as set forth below:

- (a) If the city notifies the applicant in writing on or before the twentieth day after submission that the application is incomplete, and specifically identifies the missing documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the city to render the application complete.
- (b) Subsequent findings of incompleteness shall further toll the shot clock from the time the city sends written notice of incompleteness until the time the applicant provides the missing information.
- (c) If the applicant submits new or additional documents or information that include material changes not otherwise required by the city, a new application and application fee shall be submitted.

(3) The shot clock deadline for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to this subsection (D); provided, that if the deadline calculated in this manner falls on a weekend or holiday, the deadline shall be the next business day after such date. The term "business day" means any day that is not a weekend day or holiday.

E. Permit issuance. Approval of an application authorizes the permittee to maintain and operate the small wireless facilities and any associated utility pole covered by the permit for a period of five years, subject to applicable relocation requirements

and the permittee's right to terminate at any time. At the end of each such term, such permit shall be considered automatically renewed for an equivalent duration so long as the permittee complies with the criteria of this article as of the time the permit was issued.

Sec. 10-2406. FEES.

A. Application fees.

- (1) An application for a permit under this article for the collocation of a telecommunications facility on an existing utility pole or support structure shall be accompanied by an application fee in the amount of \$100.00 per telecommunications facility.
- (2) An application for a permit for one new, modified, or replacement utility pole or support structure intended to support one or more small wireless facilities, and for one telecommunications facility to be placed on such pole or structure, shall be accompanied by an application fee of \$250.00 per pole or structure.

B. Annual rates. A permittee who does not pay the city any occupation taxes under Chapter 10, Article 18 of this Code or pay the city a franchise fee shall pay to the city an annual rate of \$20.00 for each telecommunications facility attached to a utility pole in city right of way, and an annual rate of \$250.00 for each telecommunications facility located anywhere else in city right of way or city property. A permittee who does pay the city any occupation taxes under Chapter 10, Article 18 of this Code or pay the city a franchise fee shall not be required to pay to the city an annual rate the annual rate shall be paid by or before January 1, in advance for the ensuing year.

C. Reimbursement of direct costs. If the applicant or permittee excavates or damages city right of way or other city property and the city repairs such excavation or damage, the applicant or permittee shall reimburse to the city the actual cost of such repair, as provided in Section 10-2310.

Sec. 10-2407. INTERFERENCE, REMOVAL, RELOCATION AND ABANDONMENT.

A. In the event that any facility of a permittee on city right of way or city property obstructs or hinders the usual travel or public safety or obstructs the legal use of such right of way or property by utilities or other authorized users, the city may provide written notice to the permittee of such interference and of the need to resolve such interference. In the event that any such facility of the permittee causes any radiofrequency interference to any city facilities or other uses of city right of way or city property, the city may notify the permittee in writing of such interference and the need to resolve such interference. Upon

service of any notice under this subsection, the permittee shall remedy such interference within 90 days or, in the case of an emergency, within such shorter time period as directed by the city. If such interference is not resolved in a timely manner, the permittee shall, at its own expense, remove its facilities from that location. In such case, the permittee may apply for the relocation of similar facilities at another location, without payment of an application fee.

- B. Within 10 days following written notice from the city, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its facilities, whenever the city has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance or installation of any city improvement in, under or upon the public right of way. The permittee shall be responsible to the city for any damages or penalties the city may incur as a result of the permittee's failure to remove or relocate the facilities as required in this subsection.
- C. The city retains the right and privilege to cut or move any facility of the permittee located within the public right of way or on city property, as the city may determine in its sole discretion to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the city shall notify the permittee and give the permittee an opportunity to move its own facilities prior to cutting or removing the facilities. In all cases the city shall notify the permittee after cutting or removing the facilities as promptly as reasonably possible. The permittee shall reimburse the City for any costs incurred as a result of having to cut or move any facility of the permittee located within the public right of way or on city property, and shall hold the city harmless from any damages to the permittee's property.
- D. Permittee understands and acknowledges that the city, at any time and from time to time, may require permittee to remove or relocate upon a written request from the city right of way or the city property upon ten (10) days' notice at permittee's sole cost and expense, all or a portion of the small cell facility whenever city reasonably determines that the removal or relocation is needed: (1) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a city project, (2) because the small cell facility interferes with or adversely affects proper operation of the light poles, traffic signals, city-owned communications systems or other city facilities, (3) because of a sale or vacation of the Public Ways by the city, (4) because there is a change in use of the right of way by the city provided such use similarly affects similarly licensed users in the public right of way, (5) because there is damage to and/or removal of the pole or right of way, or (6) to preserve and protect the public health and safety, in a manner not inconsistent with 47 U.S.C. § 332(c)(7). Permittee shall at its own cost and expense remove, relocate and/or adjust the small cell facility, or any part thereof, to such other location or locations in the Public Rights-of-Way, or in such manner, as appropriate, as may be designated or granted, in writing and in advance, by the city. Such removal, relocation, adjustment

shall be completed within the time prescribed by the city in its written request and in accordance with the terms of this Agreement. Permittee shall not be in default hereunder if it has taken appropriate action as directed by the city to obtain such grant. If permittee fails to remove, relocate, adjust or support any portion of the small cell facility as described by the city within the prescribed time, city may take all reasonable, necessary, and appropriate action, as stated in this ordinance.

- E. The permittee may abandon its facilities at a location. The permittee shall notify the city of abandonment of any facility at the time the decision to abandon is made, but in no case shall such notification be made later than 30 days prior to abandonment. The permittee shall, within 30 days of such notice, remove its facilities at the permittee's own expense, unless the city determines and states in writing, in its sole discretion, that any part of the facilities may be abandoned in place. The permittee shall remain solely responsible and liable for all of its facilities until they are removed from the public right of way unless the city agrees in writing to take ownership of the abandoned facilities. For the purpose of this subsection, abandonment of facilities and cancellation of the related permit shall also be deemed to have occurred after such facilities are not used for a period of one year.
- F. If the permittee fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its facilities or remove any of its abandoned facilities as required in this section, the city or its contractor may do so. In such case, the permittee shall pay all reasonable costs related to such work.

Sec. 10-2408. INDEMNIFICATION. In submitting an application and maintaining and operating its facilities, the permittee agrees to indemnify, defend and hold the city harmless from all claims, costs, damages, demands, suits, judgments, court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, permittee's acts or omissions pursuant to its permit or this article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article. Permittee's indemnity shall not apply to any loss or damage resulting from the negligence or willful misconduct of the city or its employees, contractors, or agents. The application to be signed by the applicant shall contain the indemnification language stated in this section.

Sec. 10-2409. INSURANCE.

- A. Upon and after application, the permittee of a permit under this article shall procure and thereafter continuously maintain for as long as any permit in its favor remains in effect, at the permittee's expense, commercial general liability insurance per ISO form or its equivalent with a limit of at least \$2,000,000 per occurrence and at least \$2,000,000 general aggregate for bodily injury (including death) and \$2,000,000 property damage, including explosion,

collapse and underground property damage and an Umbrella liability of \$4,000,000 with a maximum deductible of \$50,000.00 and/or base insurance. Upon receipt of notice from its insurer(s), the permittee shall provide the city with thirty (30) days prior written notice of any prospective cancellation of the policy, unless the required coverage is immediately replaced. A certificate of insurance shall be provided with the application. The policy shall be available for review by the city upon request. The policy shall include the city as additional insured as its interest may appear under this article.

- B. Upon and after application, the permittee of a permit located on right of way or other city property shall provide and maintain in effect a bond naming permittee as obligor, with a surety, in favor of the city, in the minimum amount of \$50,000, to cover all permitted sites of the permittee. The surety of the bond shall be a surety company licensed to do business in Nebraska. The bond shall be conditioned:

- (1) That the permittee and its successors or assigns shall indemnify, defend, and hold the city harmless from all claims, costs, damages, demands, suits, judgments, and court costs and costs of defense, including attorney fees, which arise out of, in whole or in part, permittee's acts or omissions pursuant to its permit or this article, or which arise out of, in whole or in part, the installation, construction, operation, or maintenance of the permittee's facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by the permit or this article.
- (2) For the maintenance of the sidewalk or public right of way.
- (3) For the compliance with all applicable laws regarding the permitted facilities and the use of the city right of way or other property.
- (4) For the return of the sidewalk, street, right of way or other public property to its condition prior to the permit.

Sec. 10-2410. PERMITTEE DUTIES. As a condition of the issuance of a permit under this article, the permittee shall perform the following duties:

- A. All telecommunication facilities, Small wireless facilities and associated communications facilities, utility poles and support structures shall be located, installed and maintained so that they do not materially endanger the lives, health or safety of persons, or materially interfere with any public improvements the city or other governmental entities (including any traffic control devices or signs, gas, electric, storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make. The location, installation or maintenance of the telecommunications facility and associated communications facilities, utility pole and support structure shall

not hinder or obstruct the usual travel or public safety on right of way, or obstruct the legal use of right of way by utilities or the safe operation of their systems or provision of service.

- B. All telecommunication facilities, small wireless facilities and associated communications facilities, utility poles, and support structures shall be located, installed, and used so as to cause minimum radiofrequency interference with the rights and reasonable convenience of other users of rights of way and of owners' property which adjoins rights of way, except to the extent such interference is specifically authorized by federal law.
- C. All construction, excavation, maintenance, and repair work done by the permittee shall be done in a safe, workmanlike and expeditious manner which minimizes inconvenience and danger to the city, the general public and individuals. All such construction, excavation, maintenance, and repair work done by the permittee shall comply with all applicable codes and laws. The city shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes, laws, and permits, and may order the permittee to perform corrective work. All right of way or other city property disturbed by permittees' activities shall be promptly restored by the permittee at its expense to its former condition, subject to inspection by the city. If the permittee fails to make required repairs, the city may give the permittee written notice of the required repairs. If after such notice the permittee fails to make the required repairs within fourteen days, the city may make the repairs, and permittee shall pay the city the reasonable documented cost of such repairs. The city shall grant the permittee a ten-day extension to perform repairs if requested by the permittee within the original fourteen-day period. In the event of immediate threat to life, safety, or to prevent serious injury, the city may immediately undertake to restore the site and then notify the permittee and charge the permittee for all reasonable restoration costs.
- D. The permittee shall install, construct, maintain and operate its telecommunications facility, small wireless facilities and associated communications facilities, utility poles, and support structures in a safe manner providing reasonable protection against injury or damage to any and all persons or property.
- E. Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Manual on Uniform Traffic Control Devices. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is filled and finished to the satisfaction of the city, or as otherwise directed by the city.

- F. All construction and use of any telecommunication facility, small wireless facilities and associated communication facilities, utility poles, and support structures shall comply with the permit and approved final plans and specifications. Upon completion of installation of the telecommunication facilities and associated communication facilities, utility poles and support structures, the permittee shall notify the Director of Public Works or his/her Designee within three (3) business days of the completion of said work so that the city may conduct an inspection as provided for above. The city will perform any such inspection within five (5) business days. Any construction that does not conform to the permit and approved final plans and specifications shall be reconstructed or repaired to conform to the permit and approved final plans and specification within five (5) business days. If the construction and use of the telecommunication facilities and associated communication facilities, utility poles, and support structures continues to fail to conform to the permit and approved final plans and specifications, the city may revoke the associated permit until such time as the work is in conformance.
- G. If a new utility pole or support structure is to be built for the sole or primary purpose of supporting a telecommunications facility, such pole or structure shall comply with all applicable codes.
- H. The permittee shall always follow the Manual on Uniform Traffic Control Devices (MUTCD) when it is working in the street, city sidewalks, or in the right of way. The city reserves the right to shut down construction by the permittee if the city determines in its sole discretion that the permittee is violating public safety.

Sec. 10-2411. LOCATION AND DESIGN STANDARDS. The City understands technology is ever changing. All applicants for telecommunications facilities shall be subject to the approval of the Director of Public Works or his or her designee. If the applicant believes the decision of the Director of Public Works or his or her designee is incorrect, the applicant may apply to the City Council for approval. All applicants should be aware and follow the standards for small wireless facilities under Section 10-2311, if practical.

Sec. 10-2412. MAKE-READY WORK.

- A. In its application, the applicant shall identify any make-ready work proposed to be performed by the city. Within one hundred twenty days after receipt of a completed application, the city shall provide a preliminary good faith estimate of the cost of such make-ready work to be paid by the applicant to the city. The applicant shall pay to the city the amount of the estimated cost. Make-ready work to be performed by the city shall be completed within ninety days after written acceptance of the good faith estimate by the applicant. Upon the city's completion of the make-ready work, the applicant shall pay the city, or the city shall refund to the applicant, as the case may be, the difference between the cost estimate paid

and the actual cost. Total fees shall not exceed actual costs of the make-ready work. Alternatively, the city and the applicant may agree that the applicant or a party other than the city may perform the make-ready work, subject to the city's approval before and after the work.

- B. The city may require replacement of the utility pole if it determines that the collocation would make the utility pole structurally unsound. The person owning the utility pole shall not require more make-ready work than required to meet applicable codes and industry standards.

Sec. 10-2413. ASSIGNMENT. A permittee may assign its rights to a permit, telecommunications facility, and associated equipment or structures it owns, to an assignee. Such assignment shall not be effective until the applicant and the assignee sign and file with the building and inspections department a notice of assignment, containing:

- A. The assignee's name, address, telephone number, and e-mail address, including emergency contact information.
- B. Exact location of all small wireless facilities and associated equipment or structures being assigned.

(Article 24 10-2401 thru 10-2413 was adopted in its entirety by Ordinance No. 2398 dated May 26, 2020)

Sec. 10-2414. MAINTENANCE RESPONSIBILITIES WITHIN THE PUBLIC RIGHT-OF-WAY

A. Purpose and Intent.

The purpose of this section is to clarify responsibility for the maintenance, repair, upkeep, and snow and ice removal of components of the public right-of-way owned by the City of Blair, Nebraska, in a manner consistent with the definition of “street” contained in this Code, and to promote public safety and efficient management of public infrastructure.

B. Relationship to Existing Definitions.

For purposes of this section, the public right-of-way shall be interpreted consistently with the term “street” as defined in this Code, including the surface and the space above and below any public street, road, alley, boulevard, easement, or other public way held by the City. The provisions of this section describe components within such street or public right-of-way and shall not be construed to limit or modify the existing definition of “street.”

C. Components of the Public Right-of-Way.

The public right-of-way owned by the City includes, but is not limited to, the following components:

1. Travel Lanes.

The portion of the street used for vehicular movement.

2. On-Street Parking Lanes.
The portion of the street designated or customarily used for parking of vehicles.
3. Off-Street Parking Areas Within the Right-of-Way.
Any parking area, bay, or improved surface located within the boundaries of the public right-of-way, including those areas:
 - a) Adjacent to or abutting a private property line; or
 - b) Constructed or maintained within the right-of-way for public parking purposes.
4. Sidewalks and Trails.
The portion of the street that is designated or intended for pedestrian use, including sidewalks, multi-use paths, and recreational or transportation trails located within the public right-of-way, whether improved or unimproved.
5. Boulevards or Tree Lawns.
The area within the street or public right-of-way is located between the curb and sidewalk, or between the sidewalk and the adjacent property line where no curb exists, including areas commonly referred to as boulevards within this Code.

D. City Responsibility.

The City shall be responsible for the maintenance, repair, upkeep, and snow and ice removal of the following components of the public right-of-way:

1. Travel lanes;
2. On-street parking lanes;
3. Off-street parking areas located within the public right-of-way, including those adjacent to or abutting private property; and
4. Such other portions of the public right-of-way as the City may designate by policy or resolution.
Such responsibility shall include, but not be limited to:
 - a) Snow and ice removal operations;
 - b) Surface maintenance and repair;
 - c) Debris removal; and
 - d) General upkeep necessary for safe vehicular use.

E. Regulation of Parking Within the Right-of-Way.

1. The City shall have the authority to regulate, restrict, or prohibit parking within any portion of the public right-of-way, including but not limited to:
 - a) Travel lanes;
 - b) On-street parking lanes; and
 - c) Off-street parking areas located within the public right-of-way.
2. Such regulation may include:
 - a) Time, place, and manner restrictions;
 - b) Permit or designated parking requirements;
 - c) Temporary or seasonal restrictions; and
 - d) Restrictions necessary to facilitate maintenance, snow removal, public safety, or efficient use of the right-of-way.
3. Parking regulations adopted pursuant to this section may be implemented through ordinance, resolution, administrative policy, signage, or traffic control devices as authorized elsewhere in this Code.

F. Responsibility of Adjacent Property Owners.

1. The owner, occupant, or person in possession or control of property abutting the public right-of-way shall be responsible for:
 - a) Maintenance and repair of sidewalks adjoining such property; and
 - b) Removal of snow and ice from such sidewalks in accordance with the requirements of this Code.
2. Sidewalks shall be maintained in a safe condition and kept free from obstructions.
3. Government-Owned Adjacent Property – Where the property abutting the public right-of-way is owned or controlled by a unit of government other than the City of Blair:
 - a) Maintenance responsibilities for off-street parking areas located within the public right-of-way and adjacent to such property shall be shared between the City and the adjacent unit of government;
 - b) Notwithstanding subsection (a), any off-street parking area located within the public right-of-way for which the adjacent unit of government has restricted, limited, or prohibited access or use by the general public shall be the sole responsibility of such unit of government for maintenance, repair, upkeep, and snow and ice removal; and
 - c) Nothing herein shall prevent the City and such unit of government from entering into agreements establishing alternative maintenance responsibilities.

G. Boulevards or Tree Lawns.

1. Maintenance of boulevards or tree lawns may be performed by the City, the adjacent property owner, or both, depending on the nature of the activity.
2. The City retains the right to utilize such areas for:
 - a) Snow storage;
 - b) Utilities; and
 - c) Public works operations.

H. Snow Removal Authority.

The City shall have full authority to conduct snow and ice removal operations within the public right-of-way, including travel lanes, on-street parking lanes, and off-street parking areas within the right-of-way, and may restrict parking pursuant to Chapter 6 of this Code.

I. No Relief of Permittee Obligations.

Nothing in this section shall be construed to relieve any permittee, utility, contractor, or other person of any obligation to repair, restore, or maintain any portion of the public right-of-way as required elsewhere in this Code.

J. Non-Exclusive Authority.

Nothing in this section shall limit the City's authority to:

- a) Enforce other provisions of this Code;
- b) Perform work within the public right-of-way as necessary for public health, safety, and welfare; or

c) Recover costs as authorized by law.

(Article 24 10-2414 was adopted in its entirety by Ordinance No. dated October 13, 2026)

Sec. 10-2415. (Reserved)

(END OF SECTION)