

CITY OF NEBRASKA CITY, NEBRASKA
MINUTES OF CITY COUNCIL REGULAR MEETING
December 16, 2013

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Nebraska City was conducted in the William F. Davis Room at City Hall, 1409 Central Avenue, on December 16, 2013. Notice of the meeting was given in advance thereof by posting in at least three public places, the designated method for giving notice, as shown by the Certificate of Posting Notice attached to these minutes. Availability of the agenda was communicated in advance to the media, Mayor and Commissioners of this proceeding and said meeting was open to the public.

Mayor Hobbie called the meeting to order at 6:00 p.m. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held. Mayor Jack Hobbie then led in the Pledge of Allegiance. Upon roll call the following answered present: Jim Stark, Dean Handy, Mark Mercer and Mayor Hobbie. Absent: Jeff Crunk. The following City Officials were present: City Administrator Joe Johnson, City Clerk-Treasurer Arnold M. Ehlers, City Attorney David Partsch, Police Chief David Lacy, and Public Properties Director/Zoning Director Dan Giittinger.

Commissioner Handy moved to approve the minutes of the December 2, 2013, City Council Regular Meeting with the correction that Stark was not in attendance, seconded by Mercer. Upon roll call the following voted YES: Handy, Mercer and Mayor Hobbie. Voting NO: None. Abstain: Stark. Motion adopted.

Commissioner Mercer moved to pay all claims except Claim # 7250J, seconded by Commissioner Handy. Upon roll call the following voted YES: Stark, Handy, Mercer and Mayor Hobbie. Voting NO: None. Motion passed.

Moved by Commissioner Handy and seconded by Stark to pay Claim # 7250J. Upon roll call the following voted YES: Stark, Handy and Mayor Hobbie. Voting NO: None. Abstain: Mercer. Motion passed.

Mayor Hobbie announced that there will be a State Senator's Meet and Greet from 4:30 to 6:00 p.m. on December 18th at Kimmel Orchard's Apple House.

Mayor Hobbie announced that there will be two meetings to discuss the results of the CIS Survey conducted earlier this fall. The first meeting will be at the Morton-James Library on December 17th at 6:30 p.m. and the second at St. Benedict's Church on December 19th at 6:30 p.m.

Mayor Hobbie opened the Public Hearing on the request from Ambassador Wellness Center to change the zoning on Lots 34 & 35; Northside Addition from R-2 to C-3. Dan Giittinger explained that the Planning Commission approved the request. Moved by Commissioner Handy and seconded by Mercer to close the Public Hearing. Upon roll call the following voted YES: Mercer, Stark, Handy and Mayor Hobbie. Voting NO: None.

City Administrator Joe Johnson distributed his prepared City Administrator's Report. The Treasurer reported cash on hand as of November 1, 2013 of \$604,213.03; revenues of \$936,980.00; expenditures of \$1,315,451.22; leaving a cash balance on hand as of November 30, 2013 of \$225,741.81. Mayor Hobbie asked that the reports be placed on file.

Mayor Hobbie introduced Ordinance No. 2929-13 entitled AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF NEBRASKA CITY, AS REFERRED TO IN SECTION 403 OF ORDINANCE NO. 2576-03, BY CHANGING THE ZONING CLASSIFICATION OF THE PROPERTY DESCRIBED IN SECTION 1 HEREOF, FROM R-2 RESIDENTIAL TO C-3 GENERAL COMMERCIAL DISTRICT; TO PROVIDE FOR INCORPORATION INTO THE OFFICIAL ZONING MAP OF THE CITY; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE; and moved that the statutory rule requiring reading on three different days be suspended. Commissioner Handy seconded the motion to suspend the rules and upon roll call the following voted YES: Stark, Mercer, Handy and Mayor Hobbie. Voting NO: None. The motion to suspend was adopted by three-fifths of the Council and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Mayor Hobbie moved for final passage of the ordinance, which motion was seconded by Commissioner Mercer. The Mayor then stated the

question: "Shall Ordinance No. 2929-13 be passed and adopted?" Upon roll call the following voted YES: Stark, Mercer, Handy and Mayor Hobbie. Voting NO: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed his signature thereto. A true and correct copy of said ordinance is as follows:

ORDINANCE NO. 2929-13

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF NEBRASKA CITY, AS REFERRED TO IN SECTION 403 OF ORDINANCE NO. 2576-03, BY CHANGING THE ZONING CLASSIFICATION OF THE PROPERTY DESCRIBED IN SECTION 1 HEREOF, FROM R-2 RESIDENTIAL TO C-3 GENERAL COMMERCIAL DISTRICT; TO PROVIDE FOR INCORPORATION INTO THE OFFICIAL ZONING MAP OF THE CITY; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Whereas, the Planning Commission held a public hearing on said application and has recommended to the City Council approval of the requested change in zoning classification, and

Whereas, the City Council has held a public hearing on the matter, after giving due notice thereof as required by law,

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF NEBRASKA CITY, NEBRASKA:

SECTION 1. That the Official Zoning Map of the City of Nebraska City, Nebraska, as adopted by Ordinance No. 2576-03 of the City of Nebraska City, Nebraska, is hereby amended from R-2 Residential to, C-3 General Commercial District insofar as the same relates to the property legally described as:

Lots 34 and 35; Northside Addition to Nebraska City, Otoe County, Nebraska.

SECTION 2. That the City Clerk be and is hereby authorized to amend the Official Zoning Map of the City of Nebraska City by designating the zoning classification therein as provided by this ordinance.

SECTION 3. All Ordinances or parts of Ordinances in conflict with this ordinance are hereby repealed.

SECTION 4. That this Ordinance shall take effect and be in force from and after its passage, approval, and publication, as provided by law.

Passed and Approved this 16th day of December, 2013.

Jack Hobbie, Mayor

Dan Giittinger explained Pay Application # 2 from Kreifels Conservation and Excavating for the South 15th Improvement Project 2013-01. Moved by Commissioner Handy and seconded by Mercer to approve Pay Application #2 in the amount of \$109,653.50 with Nebraska City Utilities paying \$17,948.15 of the total. Upon roll call the following voted YES: Mercer, Stark, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Jon Casey presented the Revised Fee Schedule for Wildwood Golf Course. Moved by Stark and seconded by Mercer to approve the fee schedule as presented. Upon roll call the following voted YES: Handy, Mercer, Stark, and Mayor Hobbie. Voting NO: None. Motion passed.

Dan Giittinger proposed trading two tractors; one from the Parks Department that needed extensive repair and was 20 years old and a second from the Street Department that is rarely used to replace the Parks tractor. The City would owe \$11,979.00 with the trade. Moved by Stark and seconded by Commissioner Handy to approve the trading of two tractors for one and paying \$11,979.00. Upon roll call the following voted YES: Mercer, Handy, Stark, and Mayor Hobbie. Voting NO: None. Motion passed.

Moved by Commissioner Handy and seconded by Stark to authorize the City Clerk – Treasurer to make the necessary financial arrangements for the purchase. This financing method was necessitated due to tight budget circumstances for this fiscal year. Upon roll call the following voted YES: Mercer, Stark, Handy, and Mayor Hobbie. Voting NO: None. Motion passed.

Leroy Frana addressed the Council with the recommendation from the BPW to approve the replacement of Cooling Tower #5 at Power Plant # 1 in the amount of \$146,725.00. Moved by

Stark and seconded by Mercer to award a contract to Sys-Kool to replace cooling tower No.5 at Power Plant No. 1 in the amount of \$146,725.00. Upon roll call the following voted YES: Handy, Mercer, Stark and Mayor Hobbie. Voting NO: None. Motion passed.

Mayor Hobbie introduced Ordinance No. 2930-13 entitled AN ORDINANCE OF THE CITY OF NEBRASKA CITY ("CITY") AMENDING ORDINANCE NO. 2917-13 TO GRANT SPIRAL COMMUNICATIONS, 602 SOUTH LOCUST, GLENWOOD, IA 51534, ("FRANCHISEE"), A NONEXCLUSIVE TELECOMMUNICATION CABLE, FIBER OPTIC CABLE, COAXIAL CABLE, OR OTHER COMMUNICATION CABLE (COLLECTIVELY, "COMMUNICATION CABLES") AND BROADBAND SERVICE FRANCHISE TO INSTALL, OPERATE, MAINTAIN, OR OTHERWISE LOCATE [COMMUNICATION CABLES AND/OR CONDUCTORS, OPERATE AN BROADBAND SYSTEM OR SIMILAR COMMUNICATION SYSTEM, AND PROVIDE BROADBAND SERVICES OR SIMILAR SERVICES IN THE CITY OF NEBRASKA CITY; SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF SAID FRANCHISE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE; AND TO PUBLISH SAID ORDINANCE IN PAMPHLET FORM; and moved that the statutory rule requiring reading on three different days be suspended. Commissioner Handy seconded the motion to suspend the rules and upon roll call the following voted YES: Stark, Mercer, Handy and Mayor Hobbie. Voting NO: None. The motion to suspend was adopted by three-fifths of the Council and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Mayor Hobbie moved for final passage of the ordinance, which motion was seconded by Commissioner Mercer. The Mayor then stated the question: "Shall Ordinance No. 2930-13 be passed and adopted?" Upon roll call the following voted YES: Stark, Mercer, Handy and Mayor Hobbie. Voting NO: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed his signature thereto. A true and correct copy of said ordinance is as follows:

ORDINANCE NO. 2930-13

**FIRST AMENDMENT TO ORDINANCE NO. 2917-13
A FRANCHISE ORDINANCE**

AN ORDINANCE OF THE CITY OF NEBRASKA CITY ("CITY") AMENDING ORDINANCE NO. 2917-13 TO GRANT SPIRAL COMMUNICATIONS, 602 SOUTH LOCUST, GLENWOOD, IA 51534, ("FRANCHISEE"), A NONEXCLUSIVE TELECOMMUNICATION CABLE, FIBER OPTIC CABLE, COAXIAL CABLE, OR OTHER COMMUNICATION CABLE (COLLECTIVELY, "COMMUNICATION CABLES") AND BROADBAND SERVICE FRANCHISE TO INSTALL, OPERATE, MAINTAIN, OR OTHERWISE LOCATE [COMMUNICATION CABLES AND/OR CONDUCTORS, OPERATE AN BROADBAND SYSTEM OR SIMILAR COMMUNICATION SYSTEM, AND PROVIDE BROADBAND SERVICES OR SIMILAR SERVICES IN THE CITY OF NEBRASKA CITY; SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF SAID FRANCHISE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE; AND TO PUBLISH SAID ORDINANCE IN PAMPHLET FORM.

PREAMBLE

WHEREAS, the public interest will be served by the granting of a non-exclusive franchise to Franchisee to install, operate, maintain, or otherwise locate Communication Cables and/or Conductors in, upon, along, across, above, over, under in any manner connected with public streets, highways, roads, alleys, easements, tunnels, viaducts, and any other public places in City as the same now or in the future may exist for the purpose of constructing and operating an Ultra-Broadband System for distribution of Ultra-Broadband Services to inhabitants of City, and for other purposes.

WHEREAS, Nebraska Revised Statutes Section 16-201 authorizes City to grant franchises of the type this Ordinance denotes.

WHEREAS, Nebraska Revised Statutes Sections 86-574 through 86-578 authorize City to own, sell, or lease Dark Fiber.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NEBRASKA CITY, NEBRASKA, AS FOLLOWS:

Section 1. Definitions. For purposes of this Ordinance, the following terms, phrases, words and their derivatives shall have the meanings given herein. When not inconsistent with

context, words used in the present tense include the future tense, words in the plural number include the singular number, and words and in singular number include words in the plural number. The words "shall" and "will" are mandatory and the word "may" is permissive. Captions used herein for each section are for convenience only and shall not be used in construing the language of this Ordinance. Words not otherwise defined shall have the meanings given to them in City Code and, if not found there, their common ordinary meaning.

A. "Annual Franchise Fee" shall mean an annual fee due from Franchisee to City for its operation of an Ultra-Broadband System within the City, as further described in Section 11 of this Ordinance.

B. "Broadband Services" shall mean video programming, data transmission, or other programming or broadcast services, including, but not limited to, communication services, interactive services, enhanced services, information services, high speed data services, cable modem services, and internet access and services to any residential, commercial, or industrial subscribers.

C. "Broadband System" shall mean the system of wired or wireless Communication Cables, Conductors, and appurtenant equipment and infrastructure installed, operated, maintained, or otherwise located to provide Broadband Services or Ultra-Broadband Services.

D. "City" shall mean the City of Nebraska City, Nebraska, a political subdivision of the State of Nebraska, and any area annexed thereto from time to time.

E. "City Administrator" shall mean the duly appointed person acting as City Administrator or an officer or employee designated by City Administrator.

F. "City Attorney" shall mean the duly appointed person acting as City Attorney or an officer or employee designated by City Attorney.

G. "City Clerk" shall mean the duly appointed person acting as City Clerk or an officer or employee designated by City Clerk.

H. "City Code" shall mean the Municipal Code of the City of Nebraska City, Nebraska, as amended from time to time.

I. "City Council" shall mean the governing body of City.

J. "City Property" shall mean all real property owned or controlled by City whether in fee ownership or other interest.

K. "City Service Area" shall mean the Corporate Limits of the City of Nebraska City, Nebraska.

L. "City Treasurer" shall mean the duly appointed person acting as City Treasurer or an officer or employee designated by City Treasurer.

M. "Communication Cables" shall mean fiber optic cable, coaxial cable, or other communication cable and any appurtenance or support thereof including, but not limited to, any poles, wires, cable, underground conduits, ducts, trenches, Conductors, manholes, fittings, wireless equipment, and any other fixtures.

N. "Conductors" shall mean all fixtures and apparatuses necessary to "light" fiber optic cable and any appurtenance or support thereof including, but not limited to, any modulators, light transmitters, optical sources, receivers, photo-detectors, amplifiers, or amplifying equipment.

O. "Dark Fiber" shall have the meaning set forth in Nebraska Revised Statute Section 86-574, as amended from time to time.

P. "Franchise" shall mean the non-exclusive Communication Cable and/or Conductor and Ultra-Broadband Service franchise granted under this Ordinance.

Q. "Franchise Area" shall mean the incorporated limits of the City as constituted from time to time during a Franchise.

R. "Franchisee" shall mean Spiral Communications, including its agents, successors, transferees, or assignees.

S. "Force Majeure" shall mean acts of God; acts of public enemies; orders of any kind of government of the United States of America or of the State of Nebraska or any of their departments, agencies or political subdivisions; riots; epidemics; landslides; lightning; earthquakes; fire; hurricanes; tornadoes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; partial or entire failure of utilities; or any other cause or event not reasonably within control of or reasonably foreseeable by the disabled party.

T. "Nebraska City Utility" shall mean and include water, wastewater, natural gas, electricity and/or other utility service furnished by the City to consumers thereof.

U. "Ordinance" shall mean the ordinance adopted herein and numbered Ordinance No. 2930-13.

V. "Permit" shall mean a permit for use of public space as defined under Section 33-150 of City Code.

W. "Person" shall mean corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities and individuals.

X. "Public Ways" includes the surface of a space above and below any real property in City which City owns or in which it holds an interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, easements, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the ownership or control of City, any easement dedicated for public use or otherwise granted to City, and any rights-of-way established, dedicated or devoted for public utility

purposes; but does not include any property specifically exempted by Order of City Council.

Y. "Rights-of-Way" shall mean all City Property and Public Ways, dedicated for public right-of-way use, collectively, within City, but shall not include any property specifically exempted by Order of City Council.

Z. "State" shall mean the State of Nebraska.

AA. "Ultra-Broadband Services" shall mean video programming, data transmission, or other programming or broadcast services, including, but not limited to, communication services, interactive services, enhanced services, information services, high speed data services, cable modem services, and Internet access and services to any residential, commercial, or industrial subscribers at a bandwidth greater than fifty (50) megabits per second.

Section 2. Grant of Franchise. City, by adoption of this Ordinance, grants to Franchisee a nonexclusive franchise right, privilege, and authority to install, operate, maintain or otherwise locate Communication Cables and/or Conductors in City Rights-of-Way for the purpose of constructing and operating an Ultra-Broadband System and providing Ultra-Broadband Services and other purposes, within City, subject to Franchisee's compliance with the terms, conditions and provisions set forth herein and City Code. City shall grant Franchisee, under this nonexclusive franchise agreement, a construction period of thirty-six (36) months from the date of this nonexclusive franchise agreement, before the City may grant another nonexclusive franchise agreement to a nonexistent vendor.

Section 3. Limitation of Rights Granted. Nothing in this Ordinance shall convey any exclusive or ownership right, title, or interest in Right-of Ways or authorize or excuse Franchisee from securing such further easements, leases, permits, or other approvals as required to lawfully occupy or use Right-of Ways. City makes no warranty to title with respect to Right-of Ways. This Ordinance conveys only the rights and privileges expressly set forth herein, and no other rights or privileges, implied or otherwise, shall be granted or conveyed.

Section 4. Term. The Franchise is for an initial term of fifteen (15) years commencing with the Effective Date of this Ordinance and Franchisee's Compliance with the Acceptance terms below. Thereafter, City and Franchisee may elect to renew this Franchise for four (4) consecutive renewal terms of five (5) years each, on such terms and conditions as may be mutually acceptable to City and Franchisee. After the four (4) consecutive renewal terms, the City and Franchisee will meet to discuss Franchisee's performance during the previous term(s), and as long as Franchisee is delivering a high quality product with top-quality service in accordance with Spiral Communication's Service Level Agreement (Exhibit A), and is working with the City on its goals of enhanced broadband, a Franchise for another term of fifteen (15) years shall not be unreasonably denied by the City.

Section 5. Acceptance. Franchisee shall accept the terms of the Franchise within thirty (30) days of the date of this Ordinance by executing the Franchisee's Acceptance included as the final page of this Ordinance and delivering it to the City Clerk. The Franchise will become effective only after Franchisee executes this Ordinance, pays all fees required by this Ordinance or City Code, and submits evidence of sufficient insurance coverage as required under Section 8.

Section 6. Specific Conditions.

A. Construction Requirements.

- i. Plans. Franchisee shall construct the Communication Cables and/or Conductors in accordance with plans and specifications submitted, with the plans and specifications submitted to the City and the Nebraska City Utilities within one-hundred twenty (120) days from the date of this Franchise Agreement, by Franchisee to the Nebraska City Utilities for purpose of coordinating with existing services which also must be approved by the City. Construction shall start within 120 days after approval by the City. Routes shall be coordinated with companies, firms or individuals having existing services within the City's rights-of-way. Construction shall be completed in accordance with Franchisee sequencing due to customer demand. Within thirty (30) days after completion of construction, Franchisee shall provide the Nebraska City Utilities two (2) complete sets and a GIS formatted version of "As built" drawings showing the precise locations, depths, and the nature of any and all materials installed. City may require certification by a licensed engineer for any or all of Franchisee's plans.
- ii. Undergrounding. Where Franchisee is approved to install any Communication Cables, Franchisee shall place and keep all Communication Cables underground. Where Franchisee desires to place certain Communication Cables above ground, Franchisee must first request and receive written permission from the pole owner and Nebraska City Utilities and then approval by the City Council.
- iii. Compliance with Electrical Codes. Where City Council specifically approves Franchisee's installation of Communication Cables aboveground, such approved cables shall be attached to poles in accordance with the National Electrical Code adopted as of the official electrical code of City. All underground Communication Cables shall be laid to a minimum depth of thirty-six (36) inches from the top of the cable to the surface of the ground, unless greater depth is required by Code.
- iv. Permits and Licenses. Prior to commencement of any construction, Franchisee shall obtain permits and licenses and pay all fees required by

law. Nebraska City will waive all City permitting fees for the use of the rights-of-way.

- v. Restoration. Franchisee shall restore all land surface, pavement, fixtures, street furniture, or other property or infrastructure to original or better condition after the work is completed on each segment of any project.
- vi. Change in Location. City shall have the right at any time, when in its sole judgment it becomes necessary or advisable, to require a change of location of any Communication Cables or Conductors as a matter of safety, or on account of a change of grade, resurfacing, repair, reconstruction of any Rights-of-Way, or the construction of any structure thereon, or for any other reason, all of which shall be done by and at the cost and expense of Franchisee in a good and workmanlike manner; provided, however, City shall complete and bear the cost and expense for any change in location for any City-owned Communication Cables.
- vii. Notices. Neither Franchisee, nor any Person acting on Franchisee's behalf, shall commence any non-emergency work in or about Rights-of-Way without providing three (3) working days' written notice to Nebraska City Utilities and City. Franchisee shall provide the same notice to the owner of any private property affected by Franchisee's work. In the event of an unexpected repair or emergency, Franchisee may commence such repair and emergency response work as required under the circumstances, provided Franchisee shall notify the Nebraska City Utilities and other utility providers as promptly as possible, before such repair or emergency work, or as soon thereafter as possible if advance notice is not practicable. All damage to utility providers shall be reported immediately to that utility, and the damaged utility shall have the right to repair and bill Franchisee. Utilities shall have the right to oversee any and all repairs.
- viii. Public Safety and Inconvenience. Franchisee shall coordinate all construction locations, activities and schedules with City Administrator and Nebraska City Utilities to minimize public inconvenience, disruption and/or damages. City Administrator may require submission of a traffic control plan prior to start of any construction in, under, or across any Public Ways used for pedestrian or vehicular traffic. During any construction activities, Franchisee, or other Person acting on its behalf, shall use, at its sole expense, suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle, or property. All work shall comply with OSHA, DOT and other federal, state or local regulations.

B. Right of City to Make Street Improvements. Nothing in this Ordinance shall be construed to prevent City and its proper authorities from maintaining sewers and gutters, or improving its streets, alleys, Public Ways, street furniture, landscaping, or other infrastructure or municipal facilities. For such purposes, City may require Franchisee to remove any of Franchisee's Communication Cables, Conductors, poles, wires, and/or connections to facilitate said construction and maintenance.

C. Interference with electric, wastewater, natural gas, water or other franchises.

- i. Authorization Necessary. Unless City Council specifically grants consent to do so, Franchisee shall not access, operate or construct within, or use the space above or under any such Rights-of-Way, in such manner as to interfere with any traffic-control cable, electric, wastewater collector, natural gas, water, any cable installed or operated by City, the holder of any franchise, or other authorization granted by City, or any other public works utilities lawfully in such Public Way or City Property. City Council shall not grant consent until Franchisee deposits with the Nebraska City Utilities a sum of money equal to the estimated cost, prepared by the Nebraska City Utilities, to defray the cost and expense of removing, replacing, and relaying such item.
- ii. Restoration. Should Franchisee disturb any such item, Franchisee shall, within ten (10) days after disturbing it, restore the same to a condition approved by the Nebraska City Utilities. After approved restoration, the Nebraska City Utilities shall refund the sum deposited by Franchisee less any sums necessary to defray any damages which arose from such disruption. If Franchisee fails to restore within ten (10) days after the same is disturbed, then the Nebraska City Utilities shall cause the same to be restored and the cost thereof shall be paid out of the sum thus deposited plus any deficiency and amounts referred to in Section 33-155 of City Code. All damage to other utility providers shall be reported immediately to that provider and the provider shall have the right to repair and bill Franchisee. Other utilities shall have the right to oversee any and all repairs.

D. Right of City to Regulate. City reserves the right to enact and enforce any additional regulations concerning the construction, operation, and maintenance of facilities along, over, or under Rights-of-Ways in City.

E. Right of City in Emergencies. City retains the right and privilege to cut, damage, or move any Communication Cables or Conductors located within the Rights-of-Way as City may determine necessary, appropriate, or useful in response to any public health or

safety emergency. City shall use its best efforts to notify the Franchisee prior to taking any of the aforementioned actions.

F. Service to Customers.

- i. Throughout the term of this Franchise, or any renewals thereto, Franchisee shall maintain within the City an office with a local telephone number and staff for the conduct of matters related to the Franchise. The office shall remain open for business to coincide with regular hours of the City.
- ii. Franchisee shall require any person providing services in the community for or on behalf of Franchisee to wear a uniform with a clearly visible Franchisee logo and identification badge bearing the name of the person wearing the same. Franchisee vehicles used for service calls shall be clearly marked with a visible Franchisee logo.
- iii. Franchisee shall provide an ultra-broadband service as an available option to all its customers within the City Service Area of a minimum bandwidth of fifty (50) megabits or greater at initial startup and after one year of operation provide a minimum bandwidth of two hundred fifty (250) megabits to the City service area. After two additional years, Franchisee shall provide an available option to all its customers within the City Service Area a minimum bandwidth of one (1) gigabit or greater. The Franchisee will be able to offer bandwidth plans lower than the fifty (50), two hundred fifty (250), and one (1) gigabit plans throughout the term of the agreement.

G. Ultra-Broadband System Requirements. Franchisee shall construct, operate, maintain and upgrade an Ultra-Broadband System capable of providing bandwidth of one (1) gigabit per second to all homes and businesses in the City.

Section 7. Indemnification. In addition to and distinct from the bonding and insurance requirements imposed by this Ordinance and City Code, Franchisee shall defend, indemnify and hold City and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney fees and costs of suit or defense arising out of, resulting from, alleging or arising out of, or resulting from, acts, omissions, failure to act, or misconduct of Franchisee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair, or removal of its Communication Cables and/or Conductors from Right-of-Ways, and in providing or offering Ultra-Broadband Services as authorized pursuant to this Ordinance or City Code.

Section 8. Insurance. Franchisee shall maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by City Attorney, with a minimum combined single limit of one million dollars (\$1,000,000.00) aggregate for any one occurrence. These required coverages shall be subject to review and approval by City Attorney for conformance with this Ordinance and City Code. At all times, Franchisee shall keep on file with City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by City Attorney for conformance with the provisions of this section evidencing (a) the existence of valid and effective policies of insurance naming City as an additional insured for the required coverage; (b) the limits of each policy; (c) the policy number; (d) the name of the insurer; (e) the effective date and expiration date of each policy; (f) the deductibles or self-insurance retainers of each policy; (g) a copy of an endorsement placed on each policy requiring thirty (30) days' notice by mail to City Clerk before the insurer may cancel the policy for any reason; (h) list Nebraska City Utilities and City as additional insured; and (i) upon request of City Clerk or City Attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination or lapse of such insurance shall automatically revoke the Franchise granted herein.

Section 9. Limitation of Franchise. This Ordinance does not grant or confer any privilege or exemption except as expressly prescribed herein. Franchisee shall only use this Franchise to provide Broadband Services as defined herein and no other services. Any privilege claimed by Franchisee in any street, alley, or other public place shall be subordinate to any lawful occupancy of such places by City and by any other public agency and by subordinate to local occupancy of such places by any other entity or person.

Section 10. Non-Exclusive Franchise. City does not agree to restrict the number of franchises in all or any part of City for any person, firm, or corporation in the same business, a competing business, or related business. The Franchise is a non-exclusive franchise. However, the City shall grant Franchisee, under this nonexclusive franchise agreement, a construction period of thirty-six (36) months from the date of this nonexclusive franchise agreement, before the City may grant another nonexclusive franchise agreement to a nonexistent vender.

Section 11. Consideration. Franchisee shall pay City an Annual Rental Fee or Annual Franchise Fee based on the following:

A. If Franchisee installs, operates, maintains, or otherwise locates Communication Cables in the City's Right-of-Ways under the authority granted to Franchisee by this Ordinance, then Franchisee shall provide a free of charge Downtown (Central Avenue between 15th Street and 5th Street) wireless access to allow individuals to access the City's home webpage. Franchisee shall also provide access direction signage within Downtown on how to access the free of charge wireless network.

B. Annual Franchise Fee. If Franchisee installs, operates, maintains, or otherwise locates Communication Cables in the City's Rights-of-Ways under the authority granted to Franchisee by this Ordinance, then Franchisee shall pay City an Annual Franchise Fee in the amount of three percent (3%) of monthly gross revenues generated by Franchisee,

but in no case shall such Annual Franchise Fee be less than three percent (3%) of annual gross revenues generated by Franchisee, unless proscribed by law. Gross revenue is for internet, phone service, and television service only.

Franchisee shall pay City the Annual Rental Fee based upon the terms and conditions of the lease agreement and the Annual Franchise Fee by submitting payment to the City Treasurer, or as otherwise directed by the City Administrator in writing, on or before the 15th day of each month. Franchisee shall pay City a prorated amount for any partial year under this Franchise. If Franchisee fails to remit any payment within ten (10) days of the payment due date, Franchisee shall pay to City a late charge of five percent (5%) of the amount of such unpaid fee. Franchisee's failure to remit payment in full within twenty (20) days of the payment due date shall be an event of default and shall be grounds for revocation of this Franchise. City shall have the right to audit the books and financial records of Franchisee compiled in the ordinary course of business as necessary to verify the Annual Rental Fee or Annual Franchise Fee.

Section 12. Reimbursement for Costs. Removed.

Section 13. Reservation of Right-of-Way Rights and Construction Restrictions. All rights granted herein to Franchisee in the public ways are based on the information and belief of City that it has title or an interest in such City Property, Public Ways, or Rights-of-Ways and the right and power to grant the rights and interests granted to Franchisee in this Ordinance. City does not represent or warrant that it has title to or any interest in the Public Ways, or Rights-of-Ways or the right to grant to Franchisee the rights and interests granted in this Ordinance. This Ordinance shall be deemed to grant only such rights to the use of City Property, Public Ways, or Rights-of-Ways as City may have the right and power to grant in the Franchise. Franchisee has the right to conduct or obtain a title search of City Property, Public Ways, or Rights-of-Ways to ascertain the status of City's rights and interest in the same, which shall be at Franchisee's sole cost and expense.

City hereby retains the right to lay and permit to be laid, electric, wastewater, natural gas, water and other pipelines, cables and conduits in the Rights-of-Way; to change any curb or sidewalk or the grade or dimension of any street; and permit to be doing any other work as City shall deem necessary or proper in its sole judgment and discretion. All such work shall be done, insofar as practical, in a manner as not to obstruct, injure or prevent the free use and operation of City's Communication Cables. If Franchisee's Ultra-Broadband System unreasonably interferes with the construction or repair of any Rights-of-Way or public improvement therein, Franchisee shall, at its sole cost and expense, commence and diligently prosecute to completion, the relocation, removal, or replacement of such facilities pursuant to City Code.

Section 14. Compliance with Law. Franchisee shall, at all times, comply with laws, codes, rules and regulations of all governmental authorities, regardless of whether it is expressly referenced in this Ordinance. Franchisee shall, at all times, comply with all applicable laws, ordinances, resolutions, codes, rules, and regulations of City and all applicable memoranda and other directives of City, as the same may be modified or amended, including, but not limited to licensing requirements that apply to Franchisee.

Section 15. Assignment of Franchise. Franchisee shall have no right to encumber, pledge, assign, or transfer the Franchise, or any of its rights and privileges granted under this Ordinance, or sell, lease, license, or permit others to use or transfer in any manner whatsoever any interest in all or a part of its facilities that may be installed or operated under the Franchise, unless: (1) proof that the assignor has the business experience and capability, credit standing, health, and financial resources necessary to successfully operate the franchise; (2) the Franchisee is not in breach of the franchise agreement, and agrees to pay all sums currently owed to the City before the assignment takes place; and (3) the City signs off on the assignment after the above mentioned conditions are met to its satisfaction, which written approval shall not be unreasonably withheld.

Section 16. Renewal. Unless applicable state or federal law establishes a different time period for renewal, if Franchisee desires to renew the Franchise granted herein, Franchisee shall file an application with City for renewal of its franchise which shall include updated information required for a franchise application. Franchisee shall file said application for renewal not more than one hundred eighty (180) days nor less than sixty (60) days before expiration of the Franchise. Upon filing a franchise renewal, the applicant shall pay all fees as provided herein. Within sixty (60) days after receiving a complete application hereunder, the Mayor and City Council shall make a determination on behalf of City, either granting or denying the renewal application in whole or in part. The Mayor and City Council shall consider, among other things, Franchisee's compliance with the requirements City Code and this Ordinance in determining whether to grant or deny Franchisee's application for renewal.

Section 17. Revocation. City may repeal this Ordinance or revoke the Franchise and any related permits issued by City, for good cause, including but not limited to, failure or refusal of Franchisee to comply with the terms, conditions, and provisions set forth in this Ordinance, as set forth in City Code or in any other applicable law or regulation. Section 33-156 of City Code shall apply to the revocation of the Franchise. Not in limitation of the foregoing, City may revoke the Franchise or any related permits for any one or more of the following reasons:

- A. Construction or operation by Franchisee at an unauthorized location;
- B. Unauthorized transfer of control of Franchisee;
- C. Unauthorized sale, assignment or transfer of the Franchise or license assets or an interest therein;
- D. Misrepresentation or fraud by or on behalf of a Franchisee in any application to City;

- E. Abandonment of Franchisee's Communication Cables or Conductors in Rights-of-Ways;
- F. Failure by Franchisee to relocate or remove Communication Cables or Conductors as required in City Code or this Ordinance;
- G. Failure to pay lawfully permitted taxes, compensation, fees or costs when and as due to City; and
- H. Insolvency or bankruptcy of Franchisee.

Section 18. Removal and Abandonment. Upon any revocation, forfeiture, termination, or nonrenewal of the Franchise, Franchisee shall sell, remove or abandon the Communication Cables and its Conductors, after an agreement is reached between the City and the Franchisee as to the appropriate exit strategy, and within thirty (30) days' notice from City. If directed by City to remove Communication Cables and/or Conductors, Franchisee shall bear all costs of removal for any and all Communication Cables and/or Conductors and other facilities or equipment owned, installed or operated by Franchisee. Franchisee shall fill any space left open from removal of the Communication Cables and/or Conductors, at Franchisee's expense and to City's satisfaction. If City directs removal, and Franchisee fails or refuses to abandon, remove, or fill within six (6) months of the revocation, City Council may cause such removal and fill to be done, and the costs of such work shall become a lien against the property of Franchisee. If Franchisee communicates in writing to the City its wishes to abandon Communication Cables and/or Conductors and grant City ownership of such, City shall communicate in writing whether or not to accept such abandonment and ownership. If City declines abandonment and ownership, Franchisee shall remove and bear all cost of removal and restoration to like condition.

Section 19. Warranties and Representations. Franchisee hereby warrants and represents to City that:

- A. It has the right, power and authority to accept the Franchise granted to it and to carry out and comply with all terms and conditions and rights and obligations herein;
- B. The individual executing the acceptance on behalf of Franchisee has the authority to bind Franchisee;
- C. Franchisee shall maintain its equipment and facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements; and
- D. Franchisee has and will maintain a valid Certificate of Convenience from the Nebraska Public Service Commission, if required, and Franchisee shall file its Certificate of Convenience with City.
- E. Franchisee has obtained, and will maintain in good standing, all other permits and licenses required by any local, state, or federal authority.

Section 20. General.

A. Controlling Law. This Ordinance, the Franchise granted herein, and the rights of the parties hereunder shall be interpreted and enforced in accordance with the laws of the State of Nebraska.

B. Administration and Enforcement. City Council may, by resolution, establish a committee or designate an officer of City to administer and/or enforce the provisions of this Ordinance. The absence of any such resolution shall place the responsibility of enforcement of this Ordinance with City Council.

C. Authorization. The Mayor of City is hereby authorized to execute and enter into the Franchise under the terms and conditions set forth herein.

D. Notices. All notices and other communications in connection with this Ordinance shall be in writing, and shall be deemed delivered to the address either: (1) when delivered in person at the address set forth below, or (2) three (3) business days after deposit in any United States Post Office, and shall be certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

CITY: City of Nebraska City, Nebraska
 Attn: City Administrator
 1409 Central Avenue
 Nebraska City, Nebraska 68410

FRANCHISEE: Spiral Communications Inc.
 Attn: General Manager
 602 South Locust
 Glenwood, Iowa 51534

By notice complying with the foregoing requirements of this section, each party shall have the right to change its address for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

E. Binding Effect. Each of the terms, conditions and provisions of this Ordinance shall be binding upon and shall inure to the benefit of the parties hereto, and any respective successors or assigns. Nothing herein shall be deemed to permit a transfer of the Franchise by Franchisee except as provided in this Ordinance. This Ordinance shall be narrowly construed in the event of any interpretation or dispute.

F. Severability. The Franchise is granted pursuant to the laws of the State of Nebraska relating to the granting of such rights and privileges by municipal corporations. If any article, clause, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Franchise or any of the remaining portions. The invalidity of any portion of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required of Franchisee.

G. Violations. City may seek all remedies available under City Code or otherwise available at law or equity for Franchisee's failure to comply with the terms and conditions of this Ordinance.

H. Force Majeure. If by any reason of Force Majeure Franchisee or City is unable to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability.

I. Effective Date. This Ordinance shall take affect and be in force from and after its passage, approval and publication and upon Franchisee's compliance with the Acceptance terms as provided herein.

PASSED and APPROVED this _____ day of _____ 20____.

ATTEST:

By: Arnold M. Ehlers
City Clerk / Treasurer

By: Jack Hobbie
Mayor

The City Council received a request from Jennifer Phillips of the Lied Lodge and Conference Center asking that parking be allowed on the south side of Sylvan Road on January 11, 2014 from 6:00 to 11:00 p.m. Moved by Commissioner Handy and seconded by Stark to approve the request to allow parking on the south side of Sylvan Road from 6:00 to 11:00 p.m. on January 11, 2014. Upon roll call the following voted YES: Mercer, Stark, Handy and Mayor Hobbie. Voting NO: None. Motion passed.

Abbott, P	Rfnd	25.00	Larson Motors	Rep	37.07
Action Tech	Sup	45.99	Madison, M	Rfnd	25.00
Adkins Signs	Sup	75.00	Matheson Tri-Gas	Sup	233.63
Allied Insurance	Ins	100.00	Mercer's	Sup	66.54
Allied Recycling	Garbage	166.06	Microfilm Imaging	Contr	80.00
Arbor Mart	Fuel	3289.78	MPOP, LLC	Rfnd	200.00
AVAC	Misc	218.00	Mullenax	Sup	66.22
Bando, C	Unif	59.94	Municipal Code	Sup	2057.12
Benefiel	Rep	428.37	Nationwide Trust	Ins	17235.76
Bennett, R	Contr	1374.72	NC Utilities	Util	7621.56
BC/BS	Rfnd	760.43	NE Arborist	Dues	125.00
Blum's Custom	Sup	22.00	North Central EMS	Dues	75.00
Brandt & Horan	Loan	58000.00	NCTC	Loan	5625.00
Bugbee Homes	Rfnd	200.00	NE Dept of Rev	Sls Tax	102.37
Card Services	Misc	206.15	NE Turfgrass	Dues	810.00
Cede and Co	Bond	216516.25	NE DED	Dues	100.00
D & D Comm	Contr	670.00	Nicolay, S	Rfnd	25.00
Don Johnson	Rfnd	400.00	O'Reilly	Sup	463.87
Don's Johns	Sup	78.00	Orschlen	Sup	125.93
Douglas Tire Co.	Rep	932.11	Otoe Co Treas.	Taxes	3178.54
Ehlers, A	Mileage	237.87	Payroll	Payroll	100346.11
Emergency Repair	Rep	852.00	River View Pest	Contr	151.00
Emerson, G	Rfnd	100.00	Russell Remodel	Rfnd	200.00
EMS Billing Svcs	Contr	2830.81	Schneider Elec.	Rep	75.00
Farmers Bank	Inv	1.55	Shell	Fuel	2632.49
Fire Protection	Sup	11.25	Shelter Home Svc	Rfnd	25.00
Food Pride	Sup	39.65	State Treas	Misc	528.65
Gatehouse Media	Adv	470.57	Sterling, J	Rfnd	25.00

Great Plains Uniform	Unif	89.00	Stutheit Impl	Sup	95.97
Hopkins Auto	Sup	81.98	Tree Worx Tree Svc	Maint	1880.00
Ideal Pure Water	Sup	57.92	Tri-State Office	Sup	325.27
Inland Truck	Rep	597.75	Tyco	Contr	282.19
Jerry's Landscaping	Maint	150.00	UHC	Ins	107336.45
Johnny's Cycle	Sup	151.06	Ultramax Ammo	Ammo	255.00
KNCY	Adv	109.62	Unifirst Corp	Sup	71.50
Knook & Kranny	Contr	2300.00	Verizon	Tele	14.04
Konica Minolta	Contr	176.17	Wage Works	Contr	72.00
Konica Minolta	Contr	230.00	Watkins	Sup	331.96
Kreifels Cons	ROW	91705.35	Windstream	Tele	2362.29
Kustom Signals	Sup	286.00			

Meeting adjourned at 6:35 p.m.

Arnold M. Ehlers, City Clerk – Treasurer

AFFIDAVIT

I, the undersigned City Clerk for the City of Nebraska City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Board of Commissioners, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Arnold M. Ehlers, City Clerk-Treasurer