

REVOCABLE PERMIT

Project Name: _____

Project Number: _____

THIS REVOCABLE PERMIT ("Permit"), made and entered into this ____ day of _____, 20__, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City") as grantor and _____, (hereinafter collectively referred to as the "Permittee") as permittee.

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

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

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

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

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

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

3. Use. The Permittee shall use the Location solely for _____ and will not use it for any other purpose whatsoever without first obtaining the written consent of the City.

County Clerk's Recording Label

4. Compensation. As compensation for this Permit, the Permittee shall pay the City a one time administrative fee of \$250.00 plus the sum of _____ Dollars (\$_____) for each year this Permit is in effect (hereinafter referred to as the "Annual Fee").

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

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

- a. The Permittee's breach of any provision of or default in the performance of any obligation pursuant to this Permit. If Permittee breaches any of the provisions hereof or is in default in the performance of any obligation imposed hereunder, the City may give thirty (30) days written notice (the "Notice Period") to the Permittee of the termination of this Permit. If the Permittee remains in default or the breach of any provision hereof remains uncured at the end of the Notice Period, this Permit shall terminate; or
- b. The Permittee's giving the City written notice ninety (90) days in advance of termination; or
- c. The City's giving the Permittee written notice ninety (90) days in advance of termination; or
- d. An order of a court of competent jurisdiction.

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

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

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

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

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

After installation of the Facility, the Permittee shall back-fill, compact, repair and repave all resulting trenches, curbs, gutters and pavement to the satisfaction of the City, restoring them to as close to their original condition as is reasonably possible.

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

Installation, maintenance and removal of the Facility shall be accomplished in a manner which will not unreasonably impede traffic adjacent to the Location or impede its use as a public way, as determined by the City. The timing and manner of such construction, maintenance and removal shall be done in compliance with the City's requirements.

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

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

9. Insurance. During the Term of this Permit, including renewals, if any, the Permittee shall obtain and maintain liability insurance in an amount of not less than \$1,000,000 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to the construction, installation, operation, maintenance, replacement, removal or other activity related to the Facility. The insurance policy shall name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured. The insurance policy shall provide coverage per occurrence and

shall state the project name and project number. Any cancellation provision must provide that if the policy is cancelled prior to the expiration date of the Permit, materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, Attention: Risk Management. A certificate of insurance in compliance with the above must be furnished to the City with the execution of this Permit and prior to commencement of construction.

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

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

12. Changes. Changes to this Permit are not binding unless made in writing and signed by both parties.

13. Captions. The captions to the sections or paragraphs of this Permit are not part of this Permit and will not affect the meaning or construction of any of its provision.

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

15. Compliance with Laws. The Permittee and its contractors shall comply with all federal, state and local laws, ordinances, regulations and rules and will not discriminate illegally against any person. The Permittee's attention is specifically drawn to 62-14-1 et seq. NMSA, (1978 Comp., 1984 Repl. Pamphlet) regarding excavation damage to pipelines and underground utility lines.

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

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

18. Assignment. The Permittee shall not assign any interest in this Permit.

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

Phone No.: _____

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

Mayor
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

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

City Engineer
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

Written notice must be made either personally or by certified United States mail. If the notice is mailed, the notice will be complete 3 days after deposited in the United States mail, postage paid, and addressed as required in this section. Notice of change of address will be given in the same manner as required by this section.

19. Joint and Several Liability. The Permittee shall be jointly and severally liable to the City for the performance of Permittee's obligations pursuant to this Permit.

20. Approval Required. This Permit shall not become effective or binding until approved by the City Engineer.

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

IN WITNESS WHEREOF, the City and the Permittee have executed this Revocable Permit the day and year first above written.

