

ACCESS AND LICENSE AGREEMENT

THIS ACCESS AND LICENSE AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2002 (the "Effective Date"), between the City of Milwaukee, WI (the "Licensor"), and CityNet Telecommunications, Inc., a Delaware corporation authorized to do business in the State of Wisconsin (the "Licensee").

WHEREAS, the Licensor's Common Council via Common Council Resolution File No. 001849 adopted October 18, 2001, has resolved that the appropriate officials in Licensor's Department of Administration – Information & Technology Management Division, the Department of Public Works – Infrastructure Services Division, and City Attorney's Office are authorized and directed to negotiate with firms interested in making use of the City's existing infrastructure for the purpose of providing broad band access to areas within the City of Milwaukee; and

WHEREAS, Licensor has received a request to use its infrastructure for the purpose of providing broad band access to areas within the City of Milwaukee as approved by the Commissioner of Public Works ("Commissioner") from Licensee, specifically Licensee has requested that Licensor grant the Licensee access to and a license to use, the sewer system (including sanitary, storm and combined sewers or a combination thereof) or such portion(s) thereof chosen by the Licensee from time to time in conjunction with the approval of Licensor (the "System"), for the purpose of installing, maintaining, operating and licensing to third parties for a fee, the use of dark (unlit) fiber optic network and related facilities and equipment, or such portion thereof chosen by Licensee from time to time in conjunction with the approval from Licensor (the "Network"), in the System; and

WHEREAS, the Licensor desires to grant the Licensee such access and license; and

WHEREAS, the Licensor's Common Council has via Common Council Resolution File No. _____ adopted _____ authorized the proper City officials to enter into this Agreement for the purposes of granting to Licensee such access and license and providing that Licensor is entitled to receive a reasonable fee, as provided herein, for such access and license; and

WHEREAS, Licensee has authorized its Chief Executive Officer to execute this Agreement on its behalf.

NOW, THEREFORE, in consideration of the premises and for the good and valuable consideration hereinafter set forth, the parties agree as follows:

Section 1. Grant of Access and License. Subject to the terms and conditions of this Agreement, the Licensor hereby grants to the Licensee access to, and a license/permit to use, the System for the purposes of installing, maintaining, operating and licensing to third parties for a fee the use of the Network in the System

(the "Access and License"). The Licensor further grants to the Licensee, at all times during the term of this Agreement, a nonexclusive easement, subject to obtaining all required permits, for ingress and egress to and from the System for the installation, maintenance and operation of the Network in the System.

Section 2. License/Permit Fee. Within thirty (30) days prior to the start of Licensee's construction of its Network, but in no case more than 180 days after the Effective Date, Licensee shall pay to Licensor \$50,000. The initial \$50,000 payment shall be credited against subsequent Fee payments. For the purposes of the section, the term "construction" shall mean CityNet's commencement and diligent continuation of the necessary engineering, design and installation of its Network and the necessary approved repairs of the System. Thereafter, the Licensee shall pay to the Licensor, on a quarterly basis, a license/permit-fee ("Fee") of two and one half percent (2½%) of the "Gross Revenues" (as defined below) received by the Licensee from Licensee's operation of the Network in the System pursuant to this Agreement. Such Fee is compensation for the use of the System and is not a tax levied or collected on income within the meaning of sec. 66.0611, Stats. Such payment shall be made within forty-five (45) days after the expiration of each quarter at the Licensor's address specified in Section 21 hereof. For purposes of this Section, "Gross Revenues" of the License shall be any and all revenue, whether received in the form of cash, credits, barter, trade, property or consideration of any kind or nature determined in accordance with generally accepted accounting principals, derived and received by the Licensee from its operation of the Network in the System. Gross Revenues include, but are not limited to, charges made by the Licensee for use of the Network by other persons or entities. Notwithstanding anything to the contrary in this Section, Gross Revenues shall not include (i) any tax or fee imposed on users of the Network by the Licensor or any other governmental authority and collected by the Licensee on behalf of such governmental entity; (ii) actual bad debt, refunds or credits, provided any such bad debt subsequently collected shall be included in gross revenues in the period collected. In addition, CityNet shall, at its expense, clean, videotape and repair, where necessary, (patch or reline) to Licensor's specifications, those System segments into which the Network will be installed. Twice annually in the first two (2) years after Network installation, CityNet shall clean and inspect those portions of the System containing the Network and shall each time supply Licensor with any updated GIS data resulting from CityNet's inspection and cleaning records. Thereafter, CityNet agrees, at its cost, to perform such inspection and cleaning every thirty-six (36) months or more frequently as is reasonably necessary to maintain the flows within the System, in the judgment of the Licensor's Commissioner of Public Works ("Commissioner"), and in consultation with Licensee. As part of the Fee, Licensee shall also supply, free of charge, to Licensor, for its exclusive use, two pair of "dark" optical fiber strands wherever the Network is installed by Licensee in the City of Milwaukee. However, such optical fibers shall be used only for governmental, non-commercial use. In addition, at no cost to Licensor, Licensee shall connect to its Network five (5) municipal buildings selected by Licensor that are within a cumulative maximum distance of 1500 linear feet from Licensee's Network for five buildings, beyond

which distance Licensors agree to pay Licensee's reasonable installation costs of connecting any municipal building to the Network. Licensee's obligation hereunder does not include connecting the Network to the buildings' internal wiring.

Section 3. Term.

The Term of this Agreement shall be twenty-four (24) consecutive years, commencing on the Effective Date. Licensors shall have the right to refuse any renewal of this Agreement in the event of a breach of a material condition of the Agreement by Licensee if such breach has not been timely cured pursuant to the provisions of the Agreement.

Section 4. Licensee's Use. The Licensee shall use the Access and License for the purpose of, installing, maintaining, operating and licensing to third parties for a fee the use of the Network in the System and any uses incidental thereto. Any other use of the Network in the System must be approved by the Commissioner. The Licensee may, with the Licensors' consent (but the Licensors shall not unreasonably withhold, delay or condition its consent), modify, alter or upgrade the Network during the Initial Term and any and all Renewal Terms, subject however, to the Licensee's duties of noninterference in this Agreement. The Licensors reserve the right to make additions, deletions or modifications to the System, subject to the Licensors' duties of noninterference set forth in Section 16 hereof and the Licensee's rights of access and use of the System hereunder. Licensee further agrees to obtain such permits as required by law.

Section 5. Installation/Construction and Maintenance Standards.

(a) The Licensee shall have the right, at its sole cost and expense, to install, maintain and operate the Network in the System. The Licensee's installation of the Network shall be made according to plans and in accordance with terms and conditions approved by the Commissioner, which approval shall not be unreasonably withheld, delayed or conditioned. In connection therewith, the Commissioner shall respond to the Licensee in writing with respect to any submittal of such plans or drawings after receipt thereof with any disapproval, objection or proposed modification within 45 days of said receipt, or such plans or drawings shall be deemed approved by the Licensors. The Licensee shall, at its sole expense, put, keep and maintain the Network in good condition throughout the entire period of this Agreement; install and maintain the Network in accordance with standard good engineering practices; and conform, when applicable, with the National Electrical Safety Code and all other applicable Local, State and Federal laws or regulations. At all reasonable times and following reasonable advance notice to the Licensee, the Licensee shall permit examination of the Network by any duly authorized representative of the Licensors. Such advance notice shall be suspended at the time of emergencies when Licensors have the need to immediately inspect the Network and the System.

(b) Licensee shall be responsible for obtaining permits from the Licensors regarding traffic and right-of-way use during the period of installation/construction of the Network and shall provide at least three (3) days notice to the Commissioner prior to undertaking any work in the System.

(c) All work by the Licensee shall be performed in compliance with applicable laws and ordinances as required by Licensors, including any and all permits required to permit work. The Licensee is not authorized to contract for or on behalf of the Licensors for work on, or the furnishing of materials to the System or any part thereof, and the Licensee shall pay any and all subcontractors, materialmen, mechanics and laborers promptly for any work performed or materials furnished at the instance of the Licensee on the System.

(d) The Network shall remain the exclusive property of the Licensee and the Licensee shall have the right to remove all or any portion of the Network at any time during the term of this Agreement, provided that the same does not otherwise interfere with the Licensors' normal operations of the System. The Network shall be deemed personal property for purposes of this Agreement, regardless of whether any portion thereof is deemed real or personal property under applicable law, and subject to these provisions as set forth in Section 13 hereof. Upon termination of this Agreement, Licensors shall retain the right to order Licensee to remove such facilities upon one hundred-eighty (180) days' written notice to Licensee. In removing the Network pursuant to this Section, the Licensee shall restore the System to substantially the same condition in which the System was prior to its use by the Licensee, normal wear and tear excepted, all at Licensee's sole cost and expense.

(e) Licensee agrees to furnish Licensors with any and all proposed construction plans and "as builds" and also to submit such information to the Licensors' Geographical Information System ("GIS").

Section 6. Damage to the System by the Network. If the System is damaged during the term of this Agreement as a result of the installation, maintenance or operation of the Network, the Licensee shall, at its own expense, repair or rebuild the System in accordance with plans approved by the Commissioner to substantially the condition in which the System was immediately prior to such damage, or reimburse the Licensors for any costs incurred as a result of Licensors' need to repair or rebuild the System on an emergency basis (in which case, Licensors is not required to contact Licensee prior to undertaking such emergency work), except with respect to normal wear and tear, damage caused by the negligence or willful misconduct of the Licensors or any of its employees, agents or representatives or modifications to the System or such portion thereof subsequent to the Licensee's first use of the System or such portion thereof. Notwithstanding the foregoing, the Licensee shall not be responsible for any damage caused or contributed to by any other licensee or Licensors or other person or entity acquiring rights to use or occupy the System directly from Licensors. However, Licensee shall be responsible for damages to the System caused or contributed to by third parties under contract or other authority with or provided by Licensee.

Section 6.1. Maintenance of the System. Prior to installation of the Network, the Licensee will clean, videotape and repair (patch or reline), where necessary, to the Licensors' specifications, those sewer segments into which the Network will be installed. However, if after investigation of the condition of that

portion of the System in which Licensee is considering installing its Network, Licensee determines, in its sole discretion, that the condition of that portion of the system is unsatisfactory to Licensee, Licensee may elect not to install its Network in that portion of the system. Licensee and Licensors may agree, but are not obligated, to share the cost of repairing a sewer segment into which the Network may be installed if each party determines it is in its best interest to share such costs. If any part of the System must be relocated, rebuilt, abandoned, or modified in any way, the Licensee shall be responsible for any and all costs associated with changes to the Network. This includes the engineering, design, construction, and relocation of the Network. The work must be done in a timely manner. The scheduling of the System design and construction shall not be adversely impacted by the design and construction of the Network modifications. Twice annually in the first two (2) years after Network installation, Licensee shall clean and inspect those portions of the System containing the Network and shall each time supply Licensors with the written report and the VHS format videotape of the inspection. Thereafter, Licensee agrees, at its cost, to perform such inspection and cleaning as provided for in Section 2 above, in the judgment of the Commissioner, and in consultation with Licensors.

Section 6.2. Emergency Maintenance of the System. If the Licensors determine that the System must be jet-rodded, jet-sawed, or repaired through conventional open-cut methods, in an emergency situation, to restore normal flow conditions to the System, the Licensors are not responsible for any damage, including consequential damages, caused to the Network and the System by Licensors undertaking such emergency maintenance work. The Licensors will make every reasonable attempt to notify the Licensee of work that may impact the Network. Licensee agrees to immediately notify Licensors of any blockage or structural failure as determined or recognized by Licensee during the operation of the System. Licensee shall maintain the capability to respond to any emergency situation within four hours of notification from the Licensors.

Section 6.3. Excavation Notification. The Licensee will be a member of "Diggers' Hotline" notification system. This system will be the exclusive mechanism used to notify the Licensee of the Licensors' intent to excavate around the Network facilities.

Section 7. Access to the System. The Licensors hereby grants to the Licensee, at all times during the term of this Agreement, a nonexclusive easement for ingress and egress to and from the System for the purpose of accessing the Network. The Licensee, at all times during the term of this Agreement, shall have access to the System and the Network, on a 24-hour, 7-day per week basis, in order to field test, install, maintain and operate the Network subject to prior notification to and approval from the Commissioner. Licensee will make judicious use of such access easement to minimize a disruption of traffic pursuant to applicable permits issued by Licensors.

Section 8. Costs Associated with the Licensee's Use of the System. The Licensee shall be solely responsible for any costs incurred in securing the Network from theft, vandalism or any other damage, subject to the Commissioner's approval of the methods for securing the System, and the Licenser shall have no responsibility for any such losses.

Section 9. Governmental Approval Contingency.

(a) It is understood and agreed that the Licensee's ability to use the System for the purposes provided in this Agreement is contingent upon its obtaining, before or after the execution date of this Agreement, all the certificates, permits, zoning, and other approvals that may be required by any federal, state, or local authorities and the failure of which to obtain would have a material adverse effect on the Licensee's ability to operate the Network in the System. Licenser may cooperate with Licensee, at no expense to Licenser, in any and all such approval or exemption applications and related proceedings. Any structural analysis, radio frequency studies, surveys or engineering studies conducted by the Licensee with respect to its intended use of the System shall be solely at the Licensee's expense. Licensee agrees to furnish such information to Licenser upon Licenser's request.

(b) The Licensee shall be and hereby is authorized to seek, apply for or otherwise request whatever zoning, land use, permitting or regulatory exemptions that may now or hereafter be available to the Licensee on account of the System being owned by the Licenser; provided, however, that the Licenser makes no representation or warranty herein as to the Licensee's entitlement to any such exemption. Licenser may cooperate with Licensee, at no expense to Licenser, in any and all such approval or exemption applications and related proceedings. Licensee is solely responsible for the cost of obtaining any zoning, land use, permitting or regulatory exemptions.

(c) The Licensee's use of the System is also contingent on the submission to the Licenser of documentation that the Licensee has met the insurance requirements of Section 12 hereof, including a certificate of insurance signed by the insurance agent or other authorized representative of the company or companies named, as well as any properly executed endorsements, if applicable. The said certificate of insurance shall provide that the subject insurance policy or policies shall not be canceled without thirty (30) days' prior written notice to the Licenser. Any self-insured retention must be declared to and approved by the Licenser.

Section 10. Telecommunications Law Requirements and Protection For Cable Television Franchisee(s).

(a) The Licensee shall be bound by the requirements and standards contained in all Local, State and Federal telecommunications laws and regulations, except those requirements and standards which are not applicable to the Licensee. The Licenser's grant under this Agreement is not intended nor should it be construed to be a grant of a cable franchise under federal or state law or under Chapter 99, Milwaukee Code of Ordinances. Further, Licensee shall on or before January 31st of

each year, provide the Commissioner with a list of all telecommunication providers whom have been permitted to use the Network.

(b) Notwithstanding any other provision herein, Licensee shall not itself use or authorize others to use Licensee's Network for the transmission of Cable Television Service in violation of any City ordinance or applicable State authorizations. If the Licenser determines that any Third Party Provider is using the Network in a manner that violates a City ordinance, rule or regulation or an applicable state authorization, Licenser shall notify Licensee in writing, and Licensee agrees to cooperate fully with the City in order to remedy the problem. Licensee shall also include the following paragraph in all agreements for the use of the Network to which Licensee is a party:

Licensee agrees that it shall not itself use or authorize others to use CityNet telecommunications facilities for the transmission of cable television service or multi-channel video programming in violation of any law of the City of Milwaukee. Licensee understands and agrees that this paragraph is specifically intended for the benefit of the City of Milwaukee and its franchised distributor(s) of cable television service and/or multi-channel video programming, and that said parties have standing to obtain judicial enforcement of this covenant. Licensee further agrees that the covenants contained in this paragraph shall be included in any sublicense agreement or assignment for the use of the CityNet telecommunications facilities which are the subject of this license agreement.

Section 11. Damages and Indemnity. (a) The Licensee shall repair or pay for all actual damages done to Licenser's property and improvements, or to the improvements of the Licenser's tenants, caused by Licensee's negligent acts.

(b) The Licensee agrees to indemnify, defend, and hold harmless the Licenser and its elected officials, officers, employees, agents and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by Licenser or for which the Licenser may be liable that arise from, are connected with, result from or are related to (i) any injury to or death of any natural person, and (ii) any damage to or destruction of property, and which arise from the negligence, willful misconduct or other fault of the Licensee, employees, agents, or subcontractors of the Licensee in the performance of this Agreement, and hydraulic sewer flow reduction in the System due to the Network, except those which arise solely from the negligence, willful misconduct, or other fault of the Licenser.

(c)(i) The Licensee shall not place any Hazardous Materials in the System, but if such materials are placed in the System by Licensee, Licensee shall be solely responsible for and will defend, indemnify, and hold harmless the Licenser, its agents, and employees harmless from and against any and all direct claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in

connection with the clean up or restoration of the sewer system associated with the Licensee's use of Hazardous Materials. The indemnification contemplated by this paragraph specifically includes costs incurred in connection with any investigation of work required by any governmental authority having jurisdiction. "Hazardous Materials" means asbestos, petroleum products, or any toxic or hazardous substance, waste, or materials as defined in any federal, state or local environmental or safety law or regulation including, but not limited to, Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

(c)(ii) The Licensee shall defend, indemnify, and hold harmless the Licensors, its officials, agents and employees, from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of the Licensee's negligent use of the right-of-way, the exercise by the Licensee of its right under the License and Licensee's operations from any and all liability pertaining to any environmental activities that result in the Licensors' being in violation of any State or Federal environmental rules and regulations that are caused by the negligent acts of the Licensee.

(d) The obligations of this Section 11 shall not apply to any liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of the Licensors, or the agents or employees of the Licensors. Licensee assumes all responsibility for damage to its Network due to the normal deterioration of any sewer line in which it installs its facilities or equipment.

(e) Licensee waives any and all claims, demands, causes of action and rights it may assert against the Licensors on account of any loss, damage or injury to the Network as a result of any event or occurrence which is beyond the reasonable control of the Licensors.

(f) The Licensors shall be liable only for the cost of repair to damaged portions of the Network arising from the negligence or willful misconduct of the Licensors, its employees, agents or contractors. Notwithstanding the above, neither the Licensors nor the Licensee shall be liable to the other for indirect or consequential damages of the other party including, but not limited to, any interruption of service or for the loss of any revenues resulting therefrom, whether caused by negligence of either party or not.

(g) All of Licensee's obligations hereunder survive the termination or expiration of this Agreement.

Section 12. Insurance.

(a) The Licensee shall, at its sole expense, take out and maintain during the term of this Agreement, a policy or policies of commercial general liability insurance issued by a company licensed to do business in the State of Wisconsin and having a financial strength or

net worth comparable to those carriers having a rating by Best in its "A" range of classification, which insurance shall protect the Licensee, the Licensors, and the Licensors' officials, officers, employees and agents from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officials, officers, directors, employees and agents, or any subcontractors of the Licensee. This liability insurance shall include, but not be limited to, protections against claims arising from bodily and personal injury and damage to property resulting from the Licensee's use of the System and Network. Insurance issued by a company described above shall protect the Licensors and the Licensee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the installation/construction, maintenance or operation of any aspect of the Network. Such insurance shall include coverage for bodily injury or property damage of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. The Licensee's policy or policies described above shall also include automobile insurance coverage for property damage and bodily injury with limits of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate. In addition to the foregoing requirements, the insurance required hereunder shall be subject to the following:

- (1) The policy or policies shall cover personal injury as well as bodily injury.
- (2) Broad Form property damage liability shall be afforded.
- (3) The Licensors, its officers, agents and employees, shall be named as an additional insured on the policy.
- (4) The policy or an endorsement thereto shall state that the coverage is primary insurance and that no other insurance effected by the Licensors will be called upon to contribute to a loss under this coverage.
- (5) Licensee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this License. The policy or an endorsement thereto shall state that the policy shall not be canceled without the insurer providing thirty (30) days prior written notice of such cancellation to the Licensors. If the Licensors shall receive such notice of cancellation, the Licensors may terminate this Agreement as provided in Section 13 hereof.

(b) It shall be the obligation of both parties to notify the other promptly of any pending or threatened litigation that would be likely to affect the Licensee's insurance coverage.

(c) Prior to commencement of any work pursuant to this Agreement, Licensee shall file with Licensors the required original certificate(s) of insurance with endorsements, which shall state the following:

1. the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
2. that the Licensor shall receive thirty (30) days' prior notice of cancellation;
3. that Licensee's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the Licensor may possess, including any self-insured retentions the Licensor may have; and any other insurance the Licensor does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and
4. that Licensee's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the Licensor.

Section 13. Termination.

(a) Except as otherwise provided in this Agreement, this Agreement may be terminated by the terminating party described below upon sixty (60) days prior written notice to the other party as follows: (i) by Licensor if Licensee has not made the timely payment of the amount required under Section 2, (ii) by either party upon a default of any material covenant or term hereof by the other party, which default is not cured within thirty (30) days after receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provision hereof); provided, however, that if such default is capable of being cured, but not within such 30-day period, this Agreement may not be terminated so long as the defaulting party commences appropriate curative action within such period and thereafter diligently prosecutes such cure to completion as promptly as possible; (iii) by the Licensee if it is unable to obtain or maintain any license, permit or other governmental approval necessary for the installation/construction, maintenance or operation of the Network in the System; (iv) by the Licensee if the System or the Network is or becomes unacceptable under the Licensee's system design, interference standards, engineering specifications or usage patterns applicable to the Network; (v) by the Licensor if, under relevant building, structural or engineering codes or standards applicable to the Network, the Network is structurally unsound (provided, however, that this Agreement shall not terminate if the Licensee repairs, refurbishes or otherwise remedies the Network within such 60-day notice period so that the structurally unsound condition no longer exists); (vi) by the Licensor, if Licensee loses any license required to provide the specified service; (vii) by the Licensor, if Licensor discontinues or abandons use of the System; (viii) by the Licensor, if the Licensor determines that continued use of the Network causes danger to public health or safety; (ix) by the Licensor, if the Licensor determines that the System becomes unsuitable for the Licensee's use; and (x) by a court order. The foregoing shall not be deemed to lengthen the period applicable to the Licensor's right to terminate this Agreement for interference by the Licensee as set forth in Section 15 hereof, or as provided in Section 12 hereof.

(b) Unless the Licensor and the Licensee shall otherwise agree, upon termination of this Agreement pursuant to Sections 12, 13, 15, or expiration, or otherwise, the Licensee shall

have the right to remove the Network from the System within ninety (90) days after the date of termination upon the written consent of Licensor which consent will not be unreasonably withheld, subject to the Commissioner's approval of additional time for removal. In removing the Network pursuant to this Section, the Licensee shall restore the System to substantially the same condition in which the System was prior to its use by the Licensee, normal wear and tear excepted, all at the Licensee's sole cost and expense.

(c) Notice of any party's exercise of its right to terminate under this Section 13 shall be given to the other party in writing in accordance with Section 21 hereof.

Section 14. Temporary Interruptions of Service. If the Licensor reasonably and in good faith determines under applicable standards, specifications or other requirements relating to public health, welfare or safety that continued operation of the Network in the System would cause or contribute to an immediate threat to public health, welfare or safety, the Licensor may, without prior notice to the Licensee, interrupt operation of the Network in the System or may order the Licensee to discontinue operation of the Network in the System. Service shall be discontinued only for the period that the immediate threat exists. If prior notice is not given to the Licensee, the Licensor shall notify the Licensee as soon as possible after the Licensor's action and give the Licensor's reason for taking the action. The Licensor shall not be liable to the Licensee or any other person or entity for any interruption in the Licensee's service or interference with the Licensee's operation of the Network in the System if the Licensor has acted in accordance with this Section 14. This paragraph shall also apply to any relocation of the System, with prior notice of at least sixty (60) days.

Section 15. Interference with Licensor.

(a) The Licensee shall not operate the Network in the System in a manner that interferes with the operations of the System by the Licensor. If such interference occurs, the Licensee shall, following written notice thereof from the Licensor, take appropriate measures necessary to eliminate or correct such interference. If such interference cannot be eliminated or corrected within 72 hours after receiving the Licensor's written notice of such interference, the Licensee shall immediately cease operating the component or components of the Network in the System causing such interference and shall not reactivate operation thereof, except intermittent operation for the purpose of testing, until such interference has been corrected or eliminated. If such interference continues to occur thirty (30) days after the Licensee has received the Licensor's written notice, the Licensor may, at its option, terminate this Agreement immediately upon written notice to the Licensee.

(b) Whenever, after the Licensee installs the Network, if it is the Licensor's good faith, reasonable determination that the Network is not located as indicated on as-built plans provided to the Licensor by the Licensee, and the Network interferes with the Licensor's reasonable use of the Licensor's right-of-way, the Licensee shall immediately take corrective actions approved in advance by the Commissioner, at the

Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

(c) If the Network is at the location indicated on the as-built plans provided to the Licensor by the Licensee and the Network interferes with the Licensor's reasonable use of its right-of-way, the Licensor will provide written notice to the Licensee that relocation of the Network is required and the Licensee shall relocate the Network within sixty (60) days of notice to the new location as approved in advance by the Licensor, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition; provided, however, if the relocation is not capable of being completed within sixty (60) days, Licensee shall be permitted additional time so long as Licensee commences efforts at relocation within such sixty (60) days and diligently attempts completion as promptly as reasonably possible.

(d) Whenever, after the Licensee installs the Network, it is determined that the Network is not located as indicated on as-built plans provided to the Licensor by the Licensee, and the Network interferes with the reasonable use of the right-of-way by a utility franchised by the Licensor prior to execution of this License, the Licensee shall immediately relocate the Network to a location within the route approved in advance by the Licensor. None of the related costs shall be paid by the Licensor. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

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

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

Section 16. Interference with Licensee. The Licensor agrees that it shall not conduct its operations in the System so as to unreasonably interfere with the Licensee's installation, maintenance or operation of the Network. The Licensor further agrees that it will require any other licensees or other persons or entities acquiring rights to use or occupy the System to provide to the Licensor the same assurances against interference required of the Licensor pursuant to this Agreement,

so long as such notification does not materially interfere or delay the approval of any other sewer improvement program. If such interference is not eliminated, the Licensee shall have the right to terminate this Agreement or seek appropriate legal and equitable relief including, but not limited to, injunctive relief enjoining such interfering use generated by any such licensee or other person or entity or seek other redress with respect thereto. However, Licensor may place or authorize the placement of non-interfering utilities over, along, under, or across the System or Network. Further, as provided in Section 4, Licensor reserves the right to make additions, deletions or modifications to the System. In which cases, any costs associated with Licensee's need to relocate all or part of the System shall be the responsibility of Licensee.

Section 17. Network. With respect to the Network to be installed/constructed by the Licensee in the System, the parties hereby agree as follows:

(a) The parties hereby acknowledge that the date for commencement of installation/construction of the Network, the design for installation/construction of the Network and the process and timing of installation/construction of the Network shall be determined and directed by the Licensee upon approval by the Licensor and under its sole supervision (subject to the Licensor's review of plans described in Section 5 hereof and the Licensee's compliance with its installation/construction duties described therein). The Licensee shall likewise be entitled to select any contractors or subcontractors to conduct the installation/construction of the Network subject to the inspection and approval of appropriate personnel of Licensor.

(b) The Licensee shall maintain during the term of this Agreement the duty of maintenance and repair of the Network and the System, but Licensee's obligation to maintain and repair the System shall be limited to such maintenance and repairs that are necessitated or caused by Licensee's activities in the System. In connection therewith, the Licensee shall have the duty of maintaining the Network in compliance with any and all applicable lighting, painting, marking or their requirements pertaining to the Network or similar facilities promulgated by Local, State or Federal agencies, or authorities having jurisdiction with respect thereto. In the case of casualty or condemnation affecting the Network as described in Section 19 hereof, the Licensee's rights with respect to this Agreement shall be as described in said Section 19 hereof.

Section 18. Assignment.

(a) The Licensee may assign this Agreement and any rights hereunder or sublicense all or part of the Network, at any time to the Licensee's "Affiliates." As used herein, "Affiliate" shall mean a parent or subsidiary of the Licensee, an entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Licensee, or an entity which merges or is consolidated with the Licensee or which purchases a controlling interest in the ownership or assets of the Licensee. As to other parties, this Agreement may not be sold, assigned, or transferred, or the Network sublicensed, without the written consent of the Licensor, which consent shall not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, the Licensee shall have the right, in its sole discretion, to license the use of the Network to other telecommunications and similar entities which in turn will provide

telecommunications and related services directly to commercial and residential end-user customers, except as provided in Section 10. The Licensor may require a non-"Affiliate" assignee or transferee to post with the Licensor security in the form of a cash deposit, letter of credit, or surety bond satisfactory in form and amount, which shall be fully refunded or otherwise released to the posting party upon termination of this Agreement (and, if applicable upon the timely removal of the Network pursuant to this Agreement), to the reasonable satisfaction of the Licensor. This Agreement shall run with the System. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

(b) In the event of transfer or assignment permitted under this Section 18, any transferee or assignee shall not be authorized to construct or operate its improvements in the System until the Licensor has approved appropriate installation/construction drawings or plans pertaining thereto in accordance with Section 5 hereof, which approval shall not be unreasonably withheld, delayed or conditioned, and provided further that the Licensor agrees that the timing procedure for review set forth in Section 5 shall apply to such drawings or plans submitted to the Licensor.

(c) In the event of any assignment by either party, the assigning or transferring party shall remain liable for all its obligations under this Agreement, unless: (1) the other party consents to release, by written instrument, the assigning or transferring party from such obligations, and (2) the assignee or transferee shall have affirmatively assumed in writing all of the obligations of the assigning or transferring party under this Agreement.

(d) Notwithstanding anything to the contrary in this Agreement, if Licensee sells, transfers or assigns to its Affiliate, any of Licensee's rights, benefits, interests, duties and obligations under this Agreement (including, without limitation, the right to receive any monies due hereunder), in whole or in part, such Affiliate of Licensee may collaterally assign all of its right, title and interest in and to this Agreement (including, without limitation, the right to receive any monies due thereunder) to any financial institution from which it has obtained financing (the "Lender") or the Lender's collateral agent. Licensor agrees (a) not to cancel or terminate this Agreement except upon at least 30 days' written notice to the Lender's administrative agent and collateral agent and (b) that the Lender's administrative agent and collateral agent shall be entitled to make any payment or otherwise perform any obligation or cure any default of the Affiliate of Licensee under this Agreement. In the event that Licensee sells, transfers or assigns to its Affiliate, and such Affiliate collaterally assigns, any rights, benefits, interest, duties and obligation under this Agreement, the Licensor will receive notice of such event and all information it may need to comply with any notice requirements hereunder."

Section 19. Condemnation and Casualty.

(a) In the event the whole of the System is taken by eminent domain, this Agreement shall terminate as of the date title to the System vests in the condemning authority. In the event a portion of the System is taken by eminent domain so as to prohibit the Licensee's installation, maintenance or operation of the Network in the System in a commercially reasonable manner, either party shall have the right to terminate this Agreement as of the date of title transfer, by

giving thirty (30) days' written notice to the other party. All damages, whether or not awarded as compensation for diminution in value of the System shall belong to the Licensor. All damages, whether or not awarded as compensation for diminution in value of the Network shall belong to the Licensee.

(b) If at any time during the term of this Agreement all or substantially all of the Network shall be damaged and/or destroyed by fire or other casualty, then the Licensee may terminate this Agreement by providing written notice to the Licensor, which termination shall be effective as of the date of such notice, and whereupon the Licensee shall be entitled to collect all insurance proceeds payable on account thereof under policies of insurance maintained by the Licensee.

Section 20. Taxes. The Licensee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Network located in the System.

Section 21. Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, by personal delivery against receipt or by overnight delivery by a nationally recognized carrier, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

If to Licensor, to:

Commission, Public Works
841 North Broadway, Room 516
Milwaukee, WI 53202

With a copy to:

CityNet Telecommunications, Inc.
8403 Colesville Road, 14th Floor
Silver Spring, Maryland 20910
Attention: Mark Perkell, General Counsel

If to Licensee, to:

Section 22. Miscellaneous.

(a) Each party agrees to cooperate with the other in executing any documents (including a short form or Memorandum of Access and License) requested by a party to protect or confirm its rights under this Agreement. Neither party shall record this Agreement in the

records of the appropriate governmental office, but may record, in lieu thereof, the aforementioned short form or Memorandum of Access and License.

(b) In addition to the obligations required to be performed hereunder by Licensor, Licensor agrees to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to entering into this Agreement, such other instruments, documents, and rights-of-way as Licensee may reasonably require in order to fully use and to perfect Licensor's grant of this access and license to use the System, Licensee shall bear the reasonable cost for preparation of such other instruments, documents and agreements.

(c) Each party agrees to furnish to the other, within thirty (30) days after request, such truthful estoppel information as the other party may reasonably request.

Section 23. Authority.

(a) Each of the individuals executing this Agreement on behalf of the Licensee or the Licensor represents to the other party that such individual is authorized to do so by requisite action of the party to this Agreement.

(b) The Licensor commits that (i) it has existing right to the System that is sufficient for the Licensee's permitted use of the System; and (ii) the Licensee shall have the quiet enjoyment of the System, and the Licensee shall not be disturbed as long as the Licensee is not in default beyond any applicable grace or cure period.

(c) Following the expiration or termination of this Agreement, the Licensee agrees to execute and deliver to the Licensor, in recordable form, a cancellation, confirming that this Agreement has expired or terminated, as the case may be.

Section 24. Nondiscrimination. The Licensee shall not discriminate or permit discrimination in the performance of this agreement in violation of federal or state laws or local ordinances because of race, color, sex, age, or disability as recognized under 42 USC 12101 *et seq.*, or because of political or religious opinions, affiliations or national origin. The Licensee certifies for itself, and agrees to obtain certifications from its contractors and subcontractors certifying, compliance with existing laws of the State of Wisconsin and the United States regarding prohibition of discrimination in employment practices on the basis of race, sex, creed, color, religion, national origin, ancestry, age, handicap, disabled veteran status and Vietnam-era veteran status; and the Licensee agrees to make good faith efforts to encourage the use of small businesses, disadvantaged business enterprises as defined in Chapter 360, Milwaukee Code of Ordinances, and women-owned businesses in its operations.

The Licensee shall not, and shall obtain from its contractors and subcontractors their agreement not to, discriminate against any employee or applicant for employment who is to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter

directly or indirectly related to employment, because of his or her race, religion, color, sex, handicap, national origin or ancestry, disabled veteran status or Vietnam-era veteran status. Breach of this covenant may be regarded as a material breach of this Agreement. However, the Licensee shall be given reasonable notice and opportunity to cure prior to the Licensors claiming or asserting such a breach.

Section 25. Computation of Time. In computing any period of time prescribed by this Agreement, the last day of any period of time prescribed in this Agreement shall be included unless it is a Saturday, Sunday, or a legal holiday as set by the Licensors. In such cases, the period of time shall run until the end of business hours of the Licensors on the next day that is not a Saturday, Sunday, or a legal holiday as set by the Licensors.

Section 26. Interest of the Licensors. No elected official or any officer or employee of the Licensors shall have a financial interest, direct or indirect, in any Licensors Agreement. Any violation of this section with the knowledge of the person or corporation contracting with the Licensors shall render the Agreement voidable by the Licensors.

Section 27. Complete Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all offers, negotiations and other agreement(s) of any kind with respect hereto. There are no representations or understandings of any kind with respect to the subject matter hereof not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties hereto.

Section 28. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

Section 29. Severability. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

Section 30. Future Benefits for Licensors. During the term of this Agreement, in connection with installing, maintaining and operating the Network in the System, the Licensee will seek to find ways to benefit, or provide additional value for, the Licensors by virtue of the Licensees access to and use of the System. Such benefit and additional value may include, without limitation, (i) assisting the Licensors in the installation of flow meters and other instruments in the System, and (ii) providing records of the condition of the System to assist the Licensors in identifying which portions of the System need repair for purposes of budgeting and planning of monetary and personnel resources.

Section 31. Renewal of License. If both the Licensors and the Licensee wish to enter into a new License agreement, then, before the expiration of the final renewal period, the Licensors and the Licensee shall enter into good faith

negotiations, the object of which will be to agree upon the terms of a renewal of this License. The agreement of the Licensors shall not be withheld or delayed unreasonably. If an agreement is reached, all terms, including the agreed-upon consideration, shall be reduced to a writing signed by both parties.

Section 32. Most Favored Municipality, Municipal Corporation. Licensee and Licensors acknowledge that the terms, benefits and provisions of this Agreement are taken as a whole and entered into based on specific requirements of the Licensors. Notwithstanding the foregoing, if Licensee enters into an agreement with another municipality or municipal corporation that contains a license/permit fee in excess of the license/permit fee defined and set forth in this Agreement in Section 2, then the license/permit fee shall be increased to the same amount in this Agreement. The Licensee shall then pay the Licensors the increased amount pursuant to the terms and conditions of this Section and Section 2. Licensee has a continuing obligation and hereby agrees to inform Licensors of any license permit fee agreed to by Licensee with any other municipality in excess of the license permit fee defined and set forth in this Agreement.

Section 33. Disadvantaged Business Enterprise Requirement. Licensee shall establish a plan for its use of disadvantaged business enterprises, as defined in Chapter 360, Milwaukee Code of Ordinances, with a spending goal of 18% per year, on a good faith, reasonable efforts basis, to be applied against Licensee's discretionary spending, as agreed upon between Licensee and the Commissioner, with regard to the construction, operation and maintenance of the Network.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

Licensors:

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Mayor

City Clerk

COUNTERSIGNED:

Comptroller

Approved as to content, form
and execution this _____ day
of _____, 2002

Special Deputy City Attorney

By:
Date:

Licensee:

CityNet Telecommunication, Inc.,
a Delaware corporation

Robert G. Berger, President
Date:

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