

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER:

22

DATE:

August 17, 1999

STAFF:

Gary Gordier/
Darin Atteberry

SUBJECT:

Resolution 99-106 Concerning Approval of a Revocable Permit Agreement Between the City and McLeodUSA Telecommunication Services, Inc. Relating to the Installation of a Fiber Optic Cable in Certain City Streets and Rights-of-Way.

RECOMMENDATION:

Staff recommends adoption of the Resolution.

EXECUTIVE SUMMARY:

McLeodUSA Telecommunication Services, Inc. ("McLeodUSA") is a telecommunications carrier that provides telecommunication services throughout the State of Colorado and is currently constructing a fiber optic telecommunications system in the State. City staff and McLeodUSA have negotiated a proposed Revocable Permit Agreement, which is attached as Exhibit "B" to the Resolution (the "Agreement"), that would grant to McLeodUSA a revocable permit, as provided in Section 10 of Article XI of the City Charter. The revocable permit would authorize McLeodUSA to install and maintain underground a fiber optic cable within certain City streets and rights-of-way (as shown on the map attached as Exhibit "A" to the Resolution).

Under the Agreement, McLeodUSA will pay the City a \$250 annual administration fee for the revocable permit. It will also be required to obtain from the City all excavation permits and to pay all fees that are required under the City Code and the City's Street Standards when excavating in City streets and rights-of-way. Further, McLeodUSA will be obligated to pay the City's telephone occupation tax as this tax is currently being assessed to US West and other telecommunication carriers. However, McLeodUSA will not be paying, at least for now, any compensation to the City for use of the City's streets and rights-of-way. It is currently an unsettled question of law whether home rule cities, such as Fort Collins, can impose a fee or charge upon telecommunication carriers in consideration for their use of municipal streets and rights-of-way. This unsettled question of law exists because of a State statute that currently prohibits all municipalities from imposing such a fee or charge on telecommunications carriers (C.R.S. Section 38-5.5-107). Consequently, the Agreement provides that if the courts or subsequent legislation resolve this unsettled question of law in favor of home rule cities imposing such a fee or charge, McLeodUSA agrees to begin negotiations with the City to establish the fee or charge that will be required to be paid under the Agreement.

It should also be noted that the Agreement is limited in its scope. McLeodUSA is only seeking to install its fiber optic cable in a specific route as part of McLeodUSA's fiber optic backbone loop for the entire front range, but intends in the future to provide service off of this backbone to customers throughout the City. Before McLeodUSA can use streets and rights-of-way throughout the City to expand its services, it will be necessary for McLeodUSA to enter into another agreement with the City in the form of either a franchise or another revocable permit. In the near future, McLeodUSA and City staff will be meeting to discuss and negotiate this agreement. If such an agreement is successfully negotiated, it will have to be approved by the City Council before going into effect.

RESOLUTION 99-106
OF THE COUNCIL OF THE CITY OF FORT COLLINS
CONCERNING APPROVAL OF A REVOCABLE PERMIT AGREEMENT
BETWEEN THE CITY AND McLEODUSA TELECOMMUNICATION SERVICES, INC.
RELATING TO THE INSTALLATION OF A FIBER OPTIC CABLE
IN CERTAIN CITY STREETS AND RIGHTS-OF-WAY

WHEREAS, McLeodUSA Telecommunication Services, Inc. ("McLeodUSA") is a telecommunications carrier that provides telecommunication services throughout the State of Colorado and is currently constructing a fiber optic telecommunication system in the State; and

WHEREAS, in so constructing its fiber optic telecommunications system, McLeodUSA will need to install underground a fiber optic cable and related facilities (the "Cable") that will be located, in part, within the City's boundaries; and

WHEREAS, to install the Cable it is necessary for McLeodUSA to have the right to locate and maintain the Cable in and under certain City streets and rights-of-way; and

WHEREAS, McLeodUSA currently desires to locate the Cable in such City streets and rights-of-way beginning on a short stretch of Vine Drive between Taft Hill Road and Overland Trail and beginning again at a point south of the intersection of Overland Trail and Mulberry Street, then proceeding south from such intersection along Overland Trail until reaching the intersection of Overland Trail and Drake Road, and thereafter proceeding east along Drake Road to the intersection of Drake Road and Taft Hill, and thereafter proceeding south along Taft Hill to the end of the City's boundary on Taft Hill Road, which route and streets are shown on the Exhibit "A" attached hereto and incorporated herein by reference (the "City Right-of-Way"); and

WHEREAS, in order to so use the City Right-of-Way, Section 10, Article XI of the City's Charter requires McLeodUSA to obtain a revocable permit from the City; and

WHEREAS, McLeodUSA and City staff have negotiated a "Revocable Permit Agreement", a copy of which is attached hereto as Exhibit "B" and incorporated by reference (the "Agreement"); and

WHEREAS, the City Council has reviewed the Agreement and determined that granting the revocable permit to McLeodUSA upon the terms and conditions set forth in the Agreement are in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the Agreement is in the City's best interests.

Section 2. That the Agreement is hereby approved, granting to McLeodUSA a revocable permit to install and maintain the Cable underground in the City Right-of-Way subject to the terms and conditions of the Agreement and the provisions of Section 10, Article XI of the City's Charter.

Section 3. That the Mayor is authorized to execute the Agreement on behalf of the City.

Passed and adopted at a regular meeting of the City Council held this 17th day of August, A.D. 1999.

Mayor

ATTEST:

City Clerk

REVOCABLE PERMIT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 1999, by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (hereinafter referred to as "the City"), and MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., an Iowa corporation (hereinafter referred to as "McLeodUSA").

WHEREAS, the City is a home rule municipality organized and existing under the laws of the State of Colorado; and

WHEREAS, McLeodUSA is a telecommunications carrier that provides telecommunications services throughout the State of Colorado and is currently constructing a fiber optic telecommunications system in the State; and

WHEREAS, in so constructing its fiber optic telecommunications system, McLeodUSA will need to install underground fiber optic cable and related facilities (hereinafter referred to jointly as "the Cable") that will be located, in part, within the City's boundaries; and

WHEREAS, to install the Cable it is necessary for McLeodUSA to have the right to locate and maintain the Cable in and under certain City streets and rights-of-way; and

WHEREAS, McLeodUSA currently desires to locate the Cable in such City streets and rights-of-way beginning on a short stretch of Vine Drive between Taft Hill Road and Overland Trail and beginning again at a point south of the intersection of Overland Trail and Mulberry Street, and then proceeding south from such intersection along Overland Trail until reaching the intersection of Overland Trail and Drake Road, and thereafter proceeding east along Drake Road to the intersection of Drake Road and Taft Hill Road, and thereafter proceeding south along Taft Hill Road to the end of the City's boundary on Taft Hill Road, which route and streets are shown on Exhibit "A" attached hereto and incorporated by reference (hereinafter referred to collectively as "the City Right-of-Way"); and

WHEREAS, in order to so use the City Right-of-Way, Section 10, Article XI of the City's Charter requires McLeodUSA to obtain a revocable permit from the City; and

WHEREAS, on August 17, 1999, the Council of the City of Fort Collins adopted Resolution 99-____, pursuant to which the City Council approved this Agreement, thereby approving the grant to McLeodUSA, on the terms and conditions hereinafter set forth, a revocable permit to install and maintain the Cable underground in the City Right-of-Way.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the parties, the parties agree as follows:

I. **Definitions.** Unless the context requires another meaning, the following terms, phrases, words and acronyms when used in this Agreement shall have the meanings ascribed to them below:

- A. *FCC* shall mean the Federal Communications Commission or any successor governmental entity.
- B. *Fiber optics* shall mean thin, transparent fibers of glass or plastic that are enclosed by material of a lower index of refraction that use light to send data, high quality video and sound throughout their length by internal reflections.
- C. *Person* shall mean an individual, partnership, association, joint stock company, trust, corporation, limited liability company, governmental entity or any other entity.
- D. *Telecommunications* shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- E. *Telecommunications carrier* shall mean any provider of telecommunications services.
- F. *Telecommunications service* shall mean the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

II. **Grant of Revocable Permit.** The City hereby grants to McLeodUSA, as of the effective date of this Agreement and subject to the terms and conditions of this Agreement, a non-exclusive revocable permit which authorizes McLeod to locate, install and maintain the Cable in, across and under the City Right-of-Way. This revocable permit is, however, subject to the Fort Collins City Charter and Code and to all other local ordinances, rules and regulations now in effect or that become law in the future, provided that McLeodUSA's rights and obligations hereunder are neither altered nor abrogated by such future laws in any material respect, subject only to the provisions of Section VII. below; and provided that such future laws are competitively neutral and non-discriminatory in their application and effect upon all telecommunications carriers located within the City.

III. **Revocable Permit Nonexclusive.** This Agreement shall not be construed as any limitation upon the right of the City to grant to any other person the rights, privileges or authorities similar to the rights, privileges and authorities herein set forth, in the City Right-of-Way. The City

specifically reserves the right to grant, at any time during the term of this Agreement, such revocable permits as it deems appropriate upon such terms and conditions as it deems appropriate.

IV. **Effective Date of Agreement.** The effective date of this Agreement shall be August 18, 1999.

V. **Term of Agreement.** The term of this Agreement, and of the grant of the revocable permit hereunder, shall be for an indefinite period of time subject, however, to the Fort Collins City Council's authority, pursuant to Section 10, Article XI of the City Charter, to revoke at its pleasure, at any time and for any reason this Agreement and the revocable permit granted hereunder. The City Council may implement such revocation by a resolution adopted by the Council. However, the City shall give McLeodUSA at least fifteen (15) days prior written notice of the date, time and place that the Council will consider such resolution.

VI. **Familiarity With Agreement.** The City and McLeodUSA hereby acknowledge that they have participated equally in the negotiation and drafting of this Agreement and, accordingly, that no court construing this Agreement shall construe it more stringently against one party than against the other.

VII. **Police Power.** In accepting the revocable permit granted under this Agreement, McLeodUSA acknowledges that its rights under this Agreement are subject to the police powers of the City to adopt and enforce general ordinances necessary for the health, safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power; provided that such laws and ordinances are competitively neutral and nondiscriminatory in their application and effect upon all telecommunications carriers located within the City.

VIII. **Revocable Permit Fees.** McLeodUSA, in consideration of the privileges granted to it under the revocable permit provided for in this Agreement, shall pay an annual administrative fee in the amount of \$250.00 payable in advance to the City on the 18th day of August of each year that this Agreement is in effect. The parties hereto acknowledge and agree that there is currently an unsettled question of law concerning whether Colorado home rule cities can impose a fee or a charge upon telecommunications carriers in consideration for their use of home rule cities' rights-of-way. This unsettled question arises primarily from the provisions of Article 5.5 of Title 38 of the Colorado Revised Statutes which states that home rule cities cannot impose a fee or charge upon a telecommunications carrier in consideration for the privilege of using the home rule city's streets and rights-of-ways. It is also acknowledged that this issue is currently being litigated in *U.S. West Telecommunications, Inc., et al., v. City and County of Denver*, Case No. 98-CV-691, filed in Denver District Court ("the Lawsuit"). Because this unsettled question of law currently exists, the parties agree that for now the City will not impose any fee or charge upon McLeodUSA for use of the City Right-of-Way until this unsettled question is resolved in the Lawsuit by a final judgment, in any other litigation by a final judgment, or by new legislation. However, in the event this unsettled question of law is resolved in the Lawsuit, in any other similar litigation or by new legislation, and

as a result, the City, as a home rule City, is legally authorized to impose such a fee or charge upon McLeodUSA, McLeodUSA agrees, within sixty (60) days after a written request by the City, to begin negotiations with the City to establish the fee or charge that will be required to be paid under this Agreement. However, McLeodUSA shall not be required to pay any such fee or charge in excess of that the City collects under a similar revocable permit agreement from all other telecommunications carriers who are required under the law to pay such fee or charge. Any such fee or charge paid under this Agreement by McLeodUSA shall be on a competitively neutral nondiscriminatory basis in relationship to such other telecommunication carriers. Notwithstanding the foregoing, McLeodUSA agrees to be subject to the City's telephone occupation tax pursuant to Section 25-326 of the City Code, as this tax is currently being assessed to U.S. West and other telecommunication carriers.

IX. Construction in City Streets. When using the City Right-of-Way to construct and install the Cable, McLeodUSA shall comply, where applicable, with all of the following provisions:

- A. The Cable shall be installed underground in the City Right-of-Way.
- B. All construction and installation of the Cable shall meet or exceed all technical standards of the FCC and other applicable Federal, State and local laws and regulations as they now exist or may hereafter be amended. In addition, such construction and installation shall be performed in an orderly and workmanlike manner and must comply with the National Electric Safety Code and good and accepted industry standards, as the foregoing apply to the providing of telecommunications services. If there is any conflict between any of these laws and standards, the stricter laws and standards shall be controlling.
- C. No installation of any part of the Improvements shall be performed or conducted within the City Right-of-Way unless plans thereof shall have been first submitted to the City Engineer and all permits needed under the City Code are issued and all permit fees required by the City Code are paid in advance, including, without limitation, the permits required by Article II of Chapter 23 of the City Code, the fees required by Article IV of Chapter 7.5 of the City Code, and the permits and fees required by the City's then current "Design and Construction Criteria, Standards and Specifications for Streets, Sidewalks, Alleys and Other Public Ways" (hereinafter referred to as "the City Street Standards").
- D. McLeodUSA, at its own cost and expense and in the manner approved by the City, and as required by the City Code and the City Street Standards, shall replace and restore all surfaces of the City Right-of-Way disturbed by any construction and installation work of McLeodUSA to as good a condition as before the work was commenced. Failure of McLeodUSA to so replace or restore such surfaces within the time period required by the City Code and the City Street Standards, shall entitle the City to cause the restoration to be made at McLeodUSA's expense as provided

by the City Code and the City Street Standards. McLeodUSA shall fully reimburse the City for all its costs incurred in performing such restoration work. Such amounts shall be paid to the City by McLeodUSA in accordance with the City Code and the City Street Standards.

- E. The City shall have the right to inspect all construction and installation work performed by McLeodUSA pursuant to this Agreement as it deems necessary to insure compliance by McLeodUSA with all the requirements of this Agreement. McLeodUSA agrees to reimburse the City for all its reasonable costs incurred for such inspections as required under the City Code and the City Street Standards.
- F. Whenever McLeodUSA shall cause, or any person acting on its behalf shall cause, any injury or damage to any City property or private property by or because of the installation, maintenance, repair or operation of the Cable, such injury or damage shall be compensated for and remedied by McLeodUSA at its expense as required by law.
- G. Upon receiving at least fifteen (15) days prior written notice from the City, McLeodUSA shall, at its own expense, protect, support, temporarily disconnect, relocate in the City Right-of-Way or remove from the City Right-of-Way, the Cable, or any portion thereof, when required to do so by the City for reasons of: traffic conditions; public safety; street, right-of-way or easement vacation; freeway or street construction; change or establishment of streets grade; installation of sewers, drains or water pipes; construction of any other type of City structure or improvement; or for any reason related to the exercise of the City's police power. Notwithstanding the foregoing, McLeodUSA shall not be required to relocate the Cable at its expense for construction projects or in the exercise of the City's police power when such actions relate to the installation of telecommunications facilities of another telecommunications carrier or of the City, if such project results in the ownership, either directly or indirectly, of the City of such telecommunications facilities. If public funds are available to any person using vacated City streets, rights-of-way or easements, for the purposes of bringing the cost of any of the foregoing, such funds shall also be made available to McLeodUSA, to the extent permitted by law.
- H. The Cable shall be located, erected and maintained by McLeodUSA so that the Cable does not: (1) endanger or interfere with the health, safety or lives of persons; (2) interfere with the free and proper use of the City's public streets, alleys, bridges, easements and other public rights-of-way, places or property, except to the minimum extent reasonably required during the installation, maintenance or repair of the Cable; (3) interfere with the rights and reasonable convenience of private property owners, except to the minimum extent reasonably required during the installation, maintenance or repair of the Cable; and (4) obstruct, hinder or interfere with any gas, electric, water, wastewater, stormwater or telecommunications facilities of the City,

any public utility, or other telecommunications carrier located within the City, except to the minimum extent required during any installation, maintenance or repair of the Cable.

X. **Insurance.** McLeodUSA shall furnish to the City and at all times during the term of this Agreement maintain in full force and effect at McLeodUSA's own cost and expense, a comprehensive commercial general liability insurance policy in the amount of two million dollars (\$2,000,000.00) with a company licensed to do business in Colorado, with a Best rating of "A-" or better and in a form satisfactory to the City Attorney, indemnifying and defending the City, City Council and all officers, boards, commissions, agents and employees thereof, from and against any and all claims, demands, actions, suits and proceedings by any person whatsoever for loss or damage, or personal injury, death or property damage, occasioned by the operations of McLeodUSA under this Agreement or alleged to so have been caused or occurred, with minimum liability limits of two million dollars (\$2,000,000.00) to any one person, any occurrence, and two million dollars (\$2,000,000.00) to two or more persons in any one occurrence; and two million dollars (\$2,000,000.00) for damage to property resulting from any one occurrence. The City shall be named as an additional insured with respect to this policy. McLeodUSA shall also provide and maintain workers' compensation insurance for its employees as required by Colorado law. All insurance coverage required by this Section XVI. shall provide for at least thirty (30) days prior written notice to the City Clerk in the event of material alterations or cancellations of any coverage afforded in the policies, before such alteration or cancellation becomes effective. McLeodUSA's maintenance of the insurance policies required shall not be construed to excuse unfaithful performance by McLeodUSA or to limit the liability of McLeodUSA to the coverage provided in the insurance policies, or otherwise to limit the City's recourse to any other remedy available at law or in equity.

XI. **Indemnification.** In connection with McLeodUSA's performance of its obligations under this Agreement, McLeodUSA agrees to indemnify and hold harmless the City, and its officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of McLeodUSA or of its officers or employees, provided that such act or omission by McLeodUSA's officers or employees occurred during the performance of their of duties and within the scope of their employment. In addition, McLeodUSA agrees to indemnify the City, and its officers and employees, from all costs related to defending such liabilities, claims and demands, including but not limited to, litigation costs, and reasonable attorney's fees, whether or not such liabilities, claims and demands are groundless, frivolous, false or fraudulent.

XII. **Removal of Cable from City Right-of-Way.** When the revocable permit granted hereunder is revoked as provided in Section V. above, the City shall have the right, but not the obligation, to remove the Cable from the City Right-of-Way. The City's reasonable costs in so removing the Cable shall be fully reimbursed to the City by McLeodUSA. Such reimbursement shall be paid to the City by McLeodUSA within thirty (30) days after McLeodUSA receives an itemized invoice from the City.

XIII. **Assignment.** This Agreement, and the revocable permit granted hereunder, shall not be assigned by McLeodUSA without the City Council's prior approval by resolution of such assignment, provided that McLeodUSA shall have the right to assign, convey or otherwise transfer its rights, title and interests and obligations under this Agreement, in whole or in part, to any entity controlled by, controlling or under control with McLeodUSA or to any entity into which McLeodUSA may be merged or consolidated or which purchases all or substantially all of the assets of McLeodUSA.

XIV. **Waiver.** No waiver by either of the parties hereto of any term and condition of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition, nor shall a waiver of any breach of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

XV. **Cumulative Provision.** The rights and remedies reserved to the City by this Agreement are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have with respect to the subject matter of this Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

XVI. **Notices.** Other than billing invoices which may be sent by first class mail, whenever written notice is required or permitted to be given under this Agreement by one party to the other, it shall be given effect by hand delivery or by mailing the same by certified mail, return receipt requested, to the party to whom given. Notices shall be addressed as follows:

If to the City to:

City Manager
City of Fort Collins
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522

With a copy to:

City Attorney
City of Fort Collins
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522

If to McLeodUSA to:

McLeodUSA Telecommunications Services, Inc.
McLeodUSA Technology Park
Attention: ROW Legal Staff
6400 C Street SW
P.O. Box 3177
Cedar Rapids, IA 52406-3177

Either party hereto may at any time designate a different person or address for the purpose of receiving notice by so informing the other party in writing. Notice by certified mail shall be deemed

effective upon actual receipt thereof or three (3) days after being deposited in the United States mail, whichever first occurs.

XVII. **Books and Records.** McLeodUSA agrees that the City may review such of its books and records during normal business hours upon five (5) business days notice and on a nondisruptive basis, as is reasonably necessary to monitor PRPA's compliance with the terms hereof.

XVIII. **Force Majeure.** Notwithstanding anything contained herein to the contrary, it is agreed that in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, war, illegality, act of God, or any other cause beyond the control of either of the parties hereto, or strikes or labor troubles (whether or not in the power of the party affected to settle the same) prevents or delays performance by either party to this Agreement, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that the performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance within a reasonable period of time.

XIX. **Governing Law and Enforceability.** This Agreement shall be construed in accordance with the laws of the State of Colorado. In addition, the parties hereto recognize that there are legal constraints imposed upon the City and McLeodUSA by constitutions, statutes, rules and regulations of the State of Colorado and of the United States, and imposed upon them by the City Charter and City Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Moreover, it is the intention of both parties to reserve any rights or remedies at law and that the execution of this Agreement is not a waiver of any rights or obligations of either of the parties under the law.

XX. **Headings.** Section headings in this Agreement are for the convenience of reference only and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement.

XXI. **No Third Party Beneficiaries.** This Agreement is made for the sole and exclusive benefit of the City and McLeodUSA and is not made for the benefit of any third party.

XXII. **Construction of Agreement.** Words of the masculine gender shall include the feminine and neuter gender; when the sentence so indicates, words of the neuter shall refer to any gender. Words in the singular shall include the plural and visa versa. This Agreement shall be construed according to its fair meaning as if prepared by both parties hereto and shall be deemed to be and contain the entire understanding and Agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, express or implied, concerning this Agreement unless set forth in writing and signed by both of the parties hereto.

XXIII. **Time is of the Essence.** Whenever this Agreement sets forth any time for any act to be performed by either of the parties, such time shall be deemed to be of the essence under this Agreement.

XXIV. **No Joint Venture.** Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating a relationship of principle and agent or a partnership or joint venture between the parties hereto, it being agreed that none of the provisions set forth herein or any of the acts of the parties herein shall be deemed to create a relationship between the parties hereto other than the relationship of permittor and permittee.

XXV. **Severability.** If any section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any State or Federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement.

XXVI. **Attorney's Fees.** In the event either of the parties hereto shall default in any of their covenants or obligations contained herein so as to require the other party in this Agreement not in default to commence legal or equitable action against the defaulting party, the defaulting party expressly agrees to pay all of the non-defaulting party's reasonable expenses in said litigation, including a reasonable sum for attorney's fees.

XXVII. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused his Agreement to be executed as of the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

By: _____

Ray Martinez
Mayor

ATTEST:

Wanda Krajicek
City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

McLeodUSA TELECOMMUNICATIONS
SERVICES, INC.,
an Iowa corporation

By: _____

ATTEST:
