

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (the “**License**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009 (the “**Effective date**”) by and between the City of Lawrence, Kansas, a municipal corporation (the “**City**”), and Lawrence Freenet, Inc., a nonprofit corporation, (“**Licensee**”).

### **RECITALS**

1. *Whereas*, the City is the holder of the Right-of-way in Lawrence, Douglas County, Kansas; and
2. *Whereas*, Licensee is a nonprofit corporation that provides internet access to the residents of Lawrence at a free or reduced rate; and
3. *Whereas*, Licensee wishes to install fiber optic cable and equipment in, on, under through and above the right-of-way of the City of Lawrence, Kansas set forth in Exhibit A to enhance its abilities to provide free internet access to Lawrence residents; and
4. *Whereas*, the City has agreed to permit Licensee to install fiber optic cable and equipment in the right-of-way for the purpose providing free internet access to Lawrence residents, in accordance with the approved plans described in Exhibit A and in accordance with the terms and conditions of this License.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and obligations contained herein, the parties hereby agree as follows:

1. **Grant of License.** Provided Licensee receives all necessary City, State and Federal approvals, to install its fiber optic cable and equipment in the manner proposed, the City hereby grants to the Licensee the non-exclusive license, right, privilege, and permission (the “**License**”) to use in common with others an area in, on, under through, and above the right-of-way to access in a safe and professional manner and with the prior approval of the City Engineer, the fiber optic cable and equipment located as described in Exhibit A, for the purpose of installing and maintaining, at Licensee’s sole cost and expense, fiber optic cable and equipment. Nothing in this License Agreement shall be interpreted to give Licensee authority to install (1) any equipment other than the equipment approved in Exhibit A; and (2) on any other City property or right-of-way not specifically described in Exhibit A without the prior approval of the City.
2. **No Representation by the City.** The Licensee represents that the City has made no representations with respect to the right-of-way or its respective

condition, and that the Licensee is not relying on any representations of the City or the City's agents with respect to the use or condition of the right-of-way. This License Agreement grants the Licensee the privilege and permission to use that portion of the right-of-way in its present condition "as is" without any warranties subject to the conditions set forth herein.

3. **Covenants of the Licensee.** The Licensee hereby covenants and warrants to the City, as follows:
- a. To install and maintain its fiber optic cable and equipment at the Licensee's sole cost and expense for the duration of the License Agreement.
  - b. To employ persons who are qualified to perform the installation and maintenance work and who are trained in appropriate safety procedures for the installations and maintenance work in the City's right-of-way.
  - c. To cause said persons installing and maintaining Licensee's fiber optic cable and equipment to use "Best Practices" in all work related to the installation and maintenance of the fiber optic cable and equipment.
  - d. To cause said persons installing and maintaining Licensee's fiber optic cable and equipment to use bucket trucks to access Westar Energy's light poles and to use at all times industry standard safety gear, including fall restraints and other safety equipment for such installation and maintenance work;
  - e. To procure and maintain at all times this License Agreement is in effect, general liability insurance for Licensee's equipment and installation and maintenance operations, with the City of Lawrence named as an additional insured party, in the amount of \$1,000,000.00 for each occurrence, \$1,000,000.00 of coverage for personal injury and \$2,000,000.00 general aggregate coverage and \$300,000.00 coverage for damage to City property.
  - f. To allow only authorized representatives of Licensee to access the right-of-way for installation or maintenance work. For the purposes of this provision, "authorized representatives of Licensee" shall mean persons covered by Licensee's general liability insurance policy in effect during the term of this License.
  - g. To notify the City Engineer in person or by telephone at least 24 hours in advance of any installation or maintenance work in the right-of-way.
  - h. To obtain a temporary use of right-of-way permit from the City Clerk's office prior to any installation or maintenance work in the right-of-way.
  - i. To refrain from causing any waste, damage, or injury to the right-of-way.
  - j. The Licensee's use of the right-of-way shall always be subject and subordinate to the City's use of the right-of-way for any public purposes. The Licensee shall coordinate the placement of its facilities in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public

improvements so as not to impact or be impacted by such public improvement.

- k. That all earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Licensee in its activities under this License Agreement shall be fully repaired or replaced within a reasonable time by the Licensee at its sole expense and to the reasonable satisfaction of the City.
- l. To ensure traffic is not unreasonably impeded by Licensee's installation or maintenance work; Licensee shall provide a traffic control plan to the City Engineer for approval prior to completing any work in the right-of-way. All traffic control shall be in compliance with the Manual of Uniform Traffic Control Devices (MUTCD). Licensee shall be responsible for all costs for traffic control. Licensee will notify the Lawrence Police Department and the Lawrence-Douglas County Fire and Medical Department of any lane closures within a reasonable time in advance of the lane closure.
- m. To remove, adjust, or relocate Licensee's fiber optic cable and equipment immediately when the City deems it an emergency, or when the City determines the equipment is interfering with or reducing the efficiency of City equipment or operations. Licensee agrees to remove or relocate its equipment when the City determines Licensee's fiber optic cable and equipment needs to be removed or relocated for the emergency or non-emergency installation, repair, maintenance, or expansion of any streets utilities located, or to be located in, on, under or through the right-of-way. The Licensee shall bear all costs associated with removing or relocating its fiber optic cable and equipment without expense to the City, its employees, agents, or authorized contractors and Licensee hereby agrees the City shall have no duty whatsoever to replace the Licensee's fiber optic cable and equipment. The Licensee may replace, at its sole cost and expense, its fiber optic cable and equipment to its former location as approved in Exhibit A, except as otherwise provided by paragraphs 6 and 7 of this License Agreement.
- n. To comply with all applicable state, federal and local laws, ordinances and regulations now or hereafter adopted or promulgated relating to its use and occupancy of the right of way.
- o. The Licensee shall not have any right to enlarge the present scope of this License Agreement, without the prior written consent of the City.
- p. At all times during the term of this License Agreement, Licensee shall secure and maintain authorization and/or consent from Westar Energy and/or its successors and assigns to locate, install and maintain its fiber optic cable and equipment on their poles including executing and operating under a lease agreement required by Westar Energy. Upon the City's request, licensee shall provide to the City documentation of its executed lease agreement with Westar Energy, including amendments thereto.
- q. It shall be the sole responsibility of the Licensee to take adequate measures to protect and defend its fiber optic cable and equipment in the

right-of-way from harm and damage. If the Licensee fails to accurately or timely locate or relocate fiber optic cable and equipment when requested, the Licensee has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way.

- r. The Licensee's fiber optic cable and equipment, other than equipment of Licensee that is customarily placed above ground or required by law to be located above ground, shall be placed underground as required by City ordinances. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Licensee in accordance with the ordinances of the City without expense to the City.
  - s. The Licensee hereby acknowledges the City's rights to the right-of-way, and agrees to never assail, resist, or deny such rights by virtue of the Licensee's occupancy or use under this License Agreement.
4. **Indemnification of the City.** During the time this License Agreement is in effect, the Licensee agrees to indemnify, defend, and save the City, and the City's officers, commissioners, agents, employees, grantees, and assigns, harmless from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise from, or are in connection with the Licensee's use, occupancy or maintenance of the right-of-way or any portion thereof on account of any injury to persons or damage to property, excluding therefrom such injury or damage caused by the negligence of the City.
5. **Consideration.** Licensee shall pay the City rent annually in the amount of ten dollars (\$10.00), commencing in 2009 and shall provide wireless internet service at a free or reduced rate to low income subscribers within the City.
6. **Term and Termination.** The term of this agreement shall be five (5) years commencing on the first day of the month following the date this License Agreement is executed by the parties. By mutual consent of the City and Licensee, this License Agreement may be extended. Licensee shall notify the City in writing at least 180 days in advance of the date the agreement expires of its desire to extend the License Agreement and the parties may negotiate the terms and conditions of an extension of the term. The City and Licensee each reserve the right to terminate the permission granted by this License Agreement at any time and for any reason by giving the other party seven (7) calendar days written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice at any times, if the continued use of the License presents a health or safety hazard. Upon the termination of the License Agreement, Licensee shall remove all fiber optic cable and equipment within a reasonable period of time not to exceed sixty (60) days from receipt of the notice of termination.

7. **Default.** Upon the Licensee's failure to comply with or abide by each and all of the provisions of this License Agreement, the City shall be entitled to give notice of default. Licensee shall have ten (10) days from the date of the receipt of the notice to cure the default. The City may, if such default continues, terminate the License Agreement without further notice.
8. **Notice.** Notice under this License Agreement, including denials or revocation or alteration of site specific approvals, notice to remove equipment and any other notice shall be provided in writing to the parties hereto as follows:

Notice to the City:  
City Manager's Office  
4<sup>th</sup> floor, City Hall  
P.O. Box 708  
Lawrence, KS 66044

Notice to the Licensee:  
Lawrence Freenet, Inc.  
[Need contact person and Address]

9. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City and the Licensee.
10. **No Assignment.** Licensee shall not transfer, assign, sublet, or pledge this License Agreement without the prior written consent of the City.
11. **Governing Law.** This License Agreement shall be construed and enforced in accordance with, and governed by, the law of the State of Kansas.
12. **Severability.** If any term of this License Agreement is found to be void or invalid, such severability shall not affect the remaining terms of this License Agreement, which shall continue in full force and effect.

**IN WITNESS WHEREOF,** the undersigned have caused this License Agreement to be executed as of the Effective Date.

**LICENSEE:**

\_\_\_\_\_  
Lawrence Freenet, Inc.  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF KANSAS            )  
COUNTY OF DOUGLAS    )

BE IT REMEMBERED, that on this\_\_\_\_\_ day of\_\_\_\_\_, 2009,  
before me, the undersigned, a Notary Public in and for the County and State aforesaid,  
came \_\_\_\_\_, who is personally known to me to be the  
same person who executed the within and foregoing instrument of writing and duly  
acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal  
the day and year last above written.

**Seal:**

\_\_\_\_\_  
**Notary Public**

**CITY OF LAWRENCE, KANSAS a  
Municipal Corporation**

\_\_\_\_\_  
David L. Corliss, City Manager

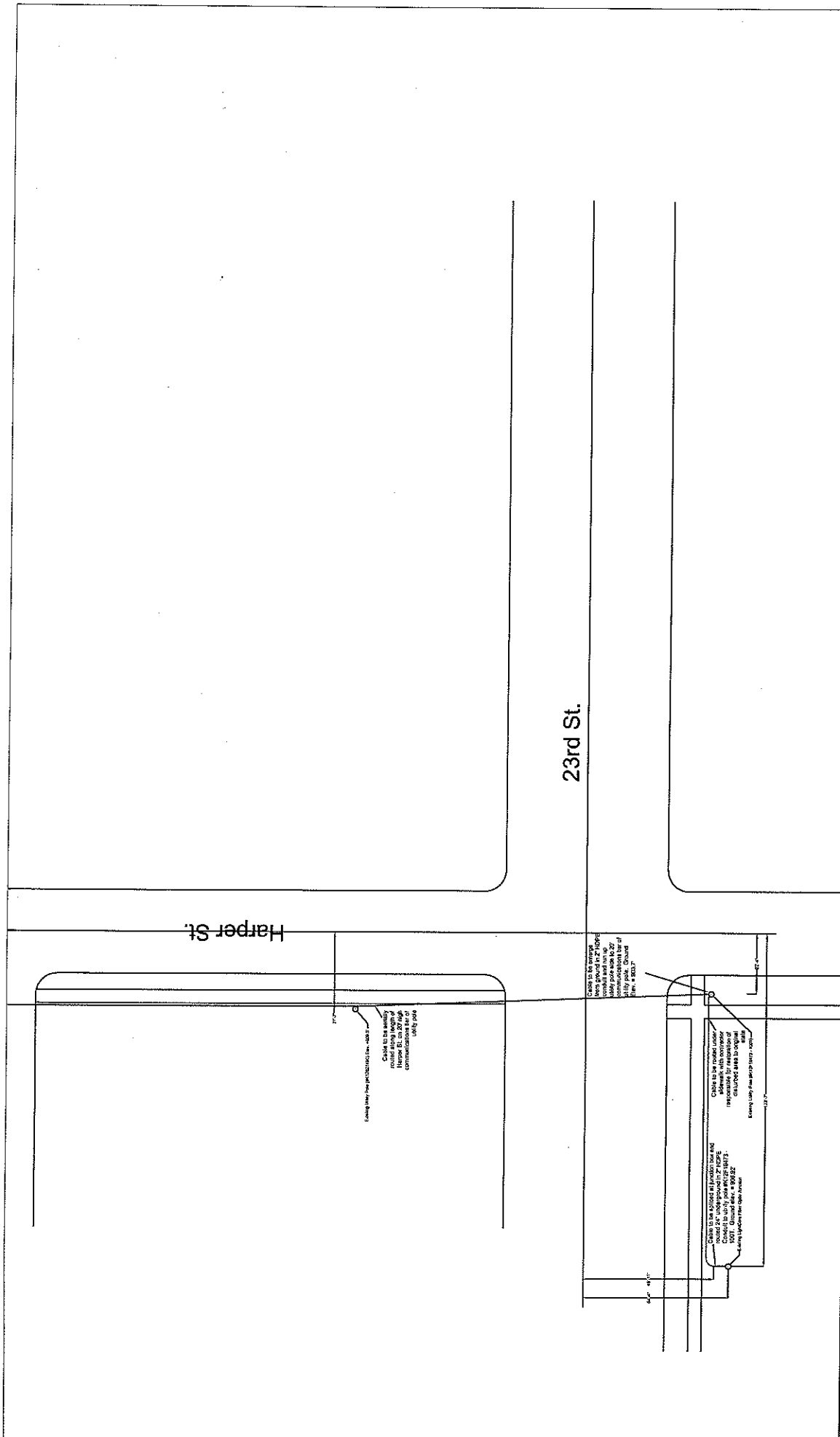
STATE OF KANSAS            )  
COUNTY OF DOUGLAS    )

BE IT REMEMBERED, that on this\_\_\_\_\_ day of\_\_\_\_\_, 2009,  
before me, the undersigned, a Notary Public in and for the County and State aforesaid,  
came David L. Corliss, City Manager, who is personally known to me to be the same  
person who executed the within and foregoing instrument of writing and duly  
acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal  
the day and year last above written.

**Seal:**

\_\_\_\_\_  
**Notary Public**

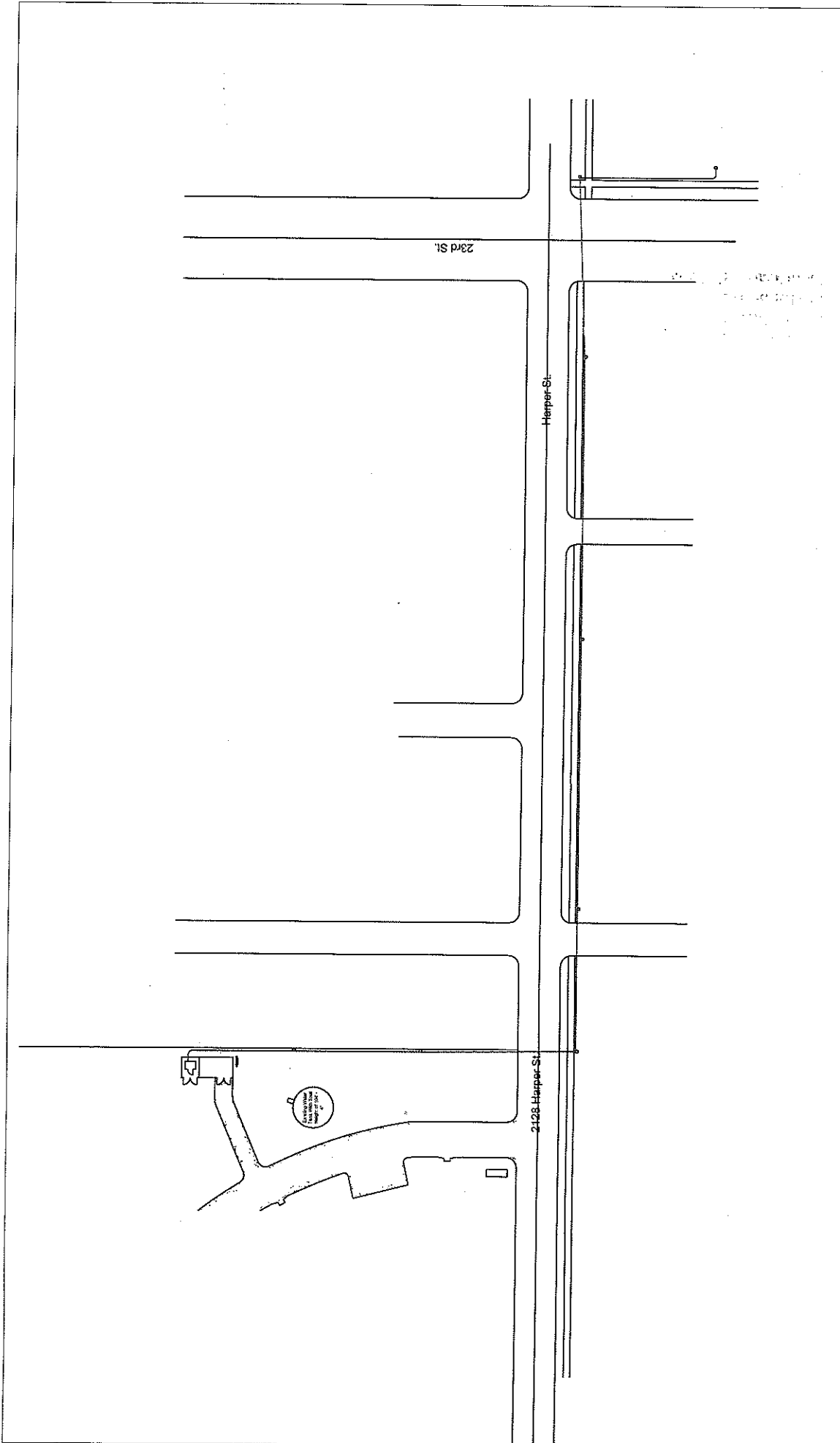


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|---------------------------------------------------|---------------------------------------------|----------------------|
| <b>Lawrence Freenet</b><br>A Community Connection | Plans Submitted by: Joshua Montgomery       | Scale: 1' : 1/32"    |
|                                                   | Lawrence Freenet Harper Tower Fiber Install | Drawing 1011, Rev. 2 |

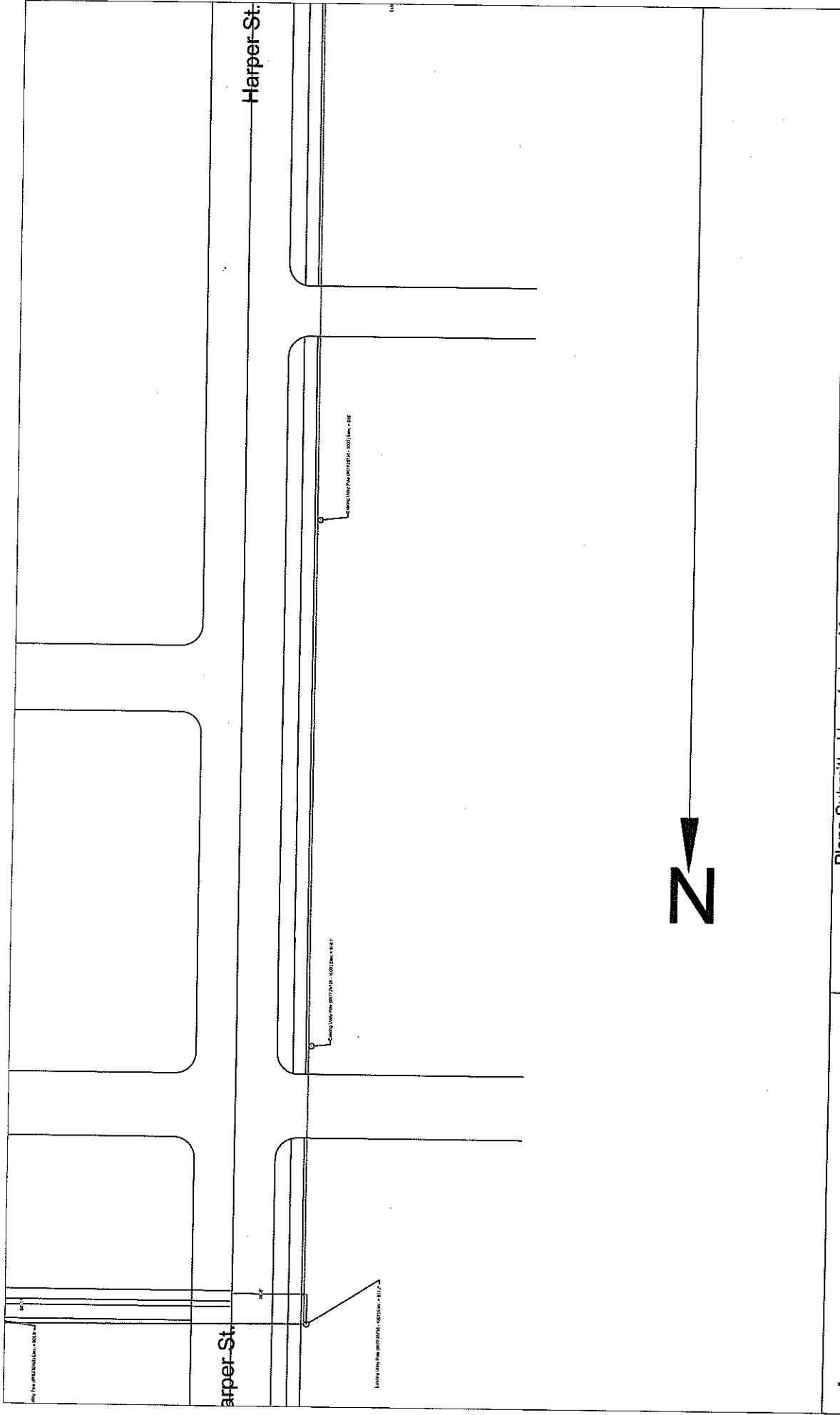
23rd and Harper - Detail Sheet







|                                                   |                                                                                    |                      |
|---------------------------------------------------|------------------------------------------------------------------------------------|----------------------|
| <b>Lawrence Freenet</b><br>A Community Connection | Plans Submitted by: Joshua Montgomery                                              | Scale: 1" = 1/64"    |
|                                                   | Lawrence Freenet Harper Tower Fiber Install<br>2128 Harper Street - Overview Sheet | Drawing 1009, Rev. 2 |



**Lawrence Freenet**  
A Community Connection

Plans Submitted by: Joshua Montgomery  
**Lawrence Freenet Harper Tower Fiber Install**

Harper - Detail Sheet

Scale: 1' : 1/32"

Drawing 1012, Rev. 2