

**HASTINGS CITY COUNCIL
SPECIAL MEETING AGENDA**

**Council Chambers – City Hall
220 North Hastings Avenue
July 16, 2018
5:30 PM**

ROLL CALL:

PLEDGE OF ALLEGIANCE:

MOTION TO ADOPT CURRENT AGENDA for July 16, 2018 Special Meeting.

PUBLIC NOTICE - Official Notice of the Special Meeting was published in the Hastings Tribune on Friday, July 13, 2018. Pursuant to Nebraska Revised Statute Section 84-1412, the public is advised that a copy of today's agenda and all reproducible written material which will be discussed at today's meeting is located at the back of the Council Chambers. Also, a current copy of the Nebraska Open Meetings Act is posted on the south wall of the Council Chambers which is accessible to members of the public.

AGENDA ITEMS

1. Mayoral appointment
2. Approval of Underground Facilities Locating and Marking Service Agreement with J Spot, LLC

ADJOURN:

The Mayor and City Council reserve the right to enter into an executive session at any time during the meeting, in accordance with the Nebraska Open Meetings Act, even though the closed session may not be indicated on the agenda.

It is the intention of the Mayor and City Council to take up the items on the agenda in sequential order. However, the Mayor and City Council reserve the right to take up matters in a different order to accommodate the schedules of the city council members, person having items on the agenda, and the public.

July 11, 2018

Utility Board
City of Hastings, Nebraska



RE: Underground Facilities Locating and Marking Service Agreement

Members of the Board:

On June 11, 2018 the Hastings City Council approved the Construction Agreement with Allo Communications, LLC for buildout of the fiber optic cable system. This work is scheduled to begin soon and will require HU to locate all HU owned underground facilities to avoid damage and impact to customers receiving service through HU owned underground facilities.

The State of Nebraska through the One Call Notification Act requires excavators to notify operators of underground facilities of any excavation and requires the operator to identify and locate the underground facilities so that proper precautions are taken to prevent injury and damage to property which could result in interruption of utility services.

HU currently has one Utility Locator on staff in the Engineering Department. The new installation of underground fiber optic cable for Allo will require additional locating resources provided by a contractor. J-Spot Locating Services, LLC was identified by staff as the contractor which has the resources and expertise to provide this service for HU during this period of intensive underground facility construction. The term of the agreement is for 12 months after the effective date unless terminated sooner. The fee structure is on an hourly basis with \$75/hour for normal working hours and \$150/ hour for Emergency or Holiday hours as defined in the agreement. The agreement has been reviewed by Dave Ptak, City Attorney.

Staff recommends that the Utility Board approve and recommend to the City Council, approval of the Underground Facilities Locating and Marking Service Agreement with J-Spot Locating Services, LLC.

Staff will be available to answer any questions the Board may have on this agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen W. Meyer".

Allen W. Meyer
Asst. Manager of Utilities

"Locally owned and operated since 1886"

UNDERGROUND FACILITIES LOCATING AND MARKING SERVICE AGREEMENT

THIS CONTRACT is entered into as of the ____ day of _____, 20____, and is by and between J Spot LLC, a Nebraska limited liability company (J-SPOT), and the City of Hastings Nebraska Utilities Department (Customer).

BACKGROUND

- A. Customer owns and operates underground facilities in the geographic area described on Attachment A to this Agreement (Contract Service Area).
- B. Customer desires to have J-SPOT provide the necessary labor and equipment to provide certain services relative to locating and marking Customer's underground facilities in the Contract Service Area.

AGREEMENT

Based on the Background set forth above and in consideration of the mutual covenants, terms and conditions set forth below, J-SPOT and Customer agree as follows:

- 1. **Definitions.** In addition to the terms defined above the following capitalized terms when used in this Agreement shall have the following meanings:
 - 1.1. **Emergency or Holiday** means locate requests made on J-SPOT-observed holidays (Memorial Day, Independence Day/July 4th, Labor Day, Thanksgiving, Christmas, and New Year's Day), weekends, and weekdays from 9 p.m. to 7 a.m.
 - 1.2. **APWA** means the American Public Works Association and its Underground Utility Location and Coordination Council.
 - 1.3. **At Fault Damages** means Damage to Customer's Facilities caused by an Excavator that occurs with respect to Locatable Facilities where J-SPOT did not perform the Locate with Reasonable Accuracy.
 - 1.4. **Contract Year** means the 365 (366 if period includes February during a leap year) days beginning with the date this agreement begins and the anniversary date each year after.
 - 1.5. **Customer's Facilities** means any Underground Facilities owned by Customer.
 - 1.6. **Damage to Customer's Facilities** Damage to Customer's Facilities means the penetration or destruction of any protective coating, sheath, housing or other protective facility of underground plant, the partial or complete severance of underground plant, or the rendering of any underground plant partially or completely inoperable.
 - 1.7. **Excavator** means any person or entity which engages directly in excavation or underground boring.

- 1.8. **High Profile Facilities** means fiber cable, 900 pair or greater, switchgear cable, and 6" main or greater.
- 1.9. **Interruption of Service** means an interruption in the services provided by Customer to its customers arising from a Damage to Customer's Facilities.
- 1.10. **Locatable Facilities** means Customer's Facilities that can be field marked with Reasonable Accuracy by using devices designed to respond to the presence of Customer's Facilities, together with records and facility prints, drawings, and maps of sufficient accuracy, but shall specifically not include Unidentifiable Facilities and Unlocatable Facilities.
- 1.11. **Locate** means the completed process of having provided Locate Services at an excavation site.
- 1.12. **Locate Service** means the process of determining the presence or absence of Customer's Facilities, their conflict with proposed excavations, and the Marking of the proper places or routes of Customer's Facilities within Reasonable Accuracy limits as required.
- 1.13. **Low Profile Facilities** means any of Customer's Facilities that are not High Profile Facilities.
- 1.14. **Marking** means the use of stakes and flags, paint strips or other clearly identifiable materials at appropriately distanced intervals and at each divergence from a straight line in accordance with the current marking standards of the APWA to show the field location of Underground Facilities accurately.
- 1.15. **Paintable Locate** means that Customer has buried facilities within the area of the locate request or scope of the ticket.
- 1.16. **Project Locate** means a Locate that requires J-SPOT to spend more than one (1) hour at the excavation site.
- 1.17. **Reasonable Accuracy** means the placement of appropriate Markings within eighteen(18) inches plus half of the width of the utility of the outside dimensions of both sides of an Underground Facility.
- 1.18. **Restoration Costs** means the actual costs incurred by Customer to repair Damage to Customer's Facilities arising from At Fault Damages. Restoration Costs is equal to only the actual labor, equipment and material costs incurred by Customer to repair the Damage to Customer's Facilities. Restoration Costs specifically exclude costs arising from betterment of plant (which shall include, among other things, any upgrade, improvement, reinforcement, enlargement or extension of Customer's Facilities).
- 1.19. **Services** mean the services to be provided by J-SPOT under this Agreement.
- 1.20. **Site Visit** means to visit the site of the locate request, but there are no Locatable Facilities to be marked.
- 1.21. **Site Surveillance** means to watch over and protect Customer's Facilities during unusual or extensive excavation projects (i.e. road widening projects, sewer projects, etc.) and

providing such continuous on-site Locate Services as may be dictated by the nature and scope of the excavations. Commonly referred to as a "Watchdog" within the industry.

- 1.22. **Ticket** means the document generated at the one-call center and transmitted to J-SPOT, containing each locate request which J-SPOT is contractually obligated to mark.
 - 1.23. **Underground Facilities** means any item buried or placed below the ground for use in connection with the storage or conveyance of water, sewage, electronic telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids or other substance including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors below ground.
 - 1.24. **Unidentifiable Facilities** means Customer's Facilities that are neither apparent on the records or facility prints, drawings or maps provided by Customer or from a Visual Examination.
 - 1.25. **Unlocatable Facilities** means Customer's Facilities whose presence is known either from records provided by Customer or a Visual Examination, but which cannot be field marked with Reasonable Accuracy using standard procedures employed by J-SPOT.
 - 1.26. **Visual Examination** means an attempt to determine the existence of Customer's Facilities at an excavation site by a reasonable visual inspection rather than from Customer's maps and records.
2. Responsibilities of J-SPOT.
- 2.1 J-SPOT shall furnish all labor, materials and equipment necessary to perform Locate Services for the City utility mains, City mains shall include natural gas, water, sewer, electric, and street lights. J Spot to also locate private water, sewer, natural gas and electric service lines with the cost of locating private services billed to Hastings Utilities as a separate item on the invoice. Customer within the Contract Service Area except for the maps and records to be provided by Customer under Section 3.1. J-SPOT will receive marking instructions from both the Customer and contractors working in the areas of existing utilities. J Spot to provide all marking paint as needed and invoice Hastings Utilities at \$3.00 per can. Red, Green, Yellow and Blue Flags to be provided by J-Spot at \$80.00 per 1,000 flags and invoiced to Hastings Utilities. Wording on flags to be "Hastings Utilities Located by J-Spot" J-Spot's phone number to be listed on the flag also.
 - 2.2 J-SPOT will assess whether a field visit to the excavation site and a Visual Examination is required to determine if a conflict exists between the Customer's Facilities and the proposed excavation. If J-SPOT determines that no field visit or Visual Examination is necessary, J-SPOT will proceed under section 2.4 below.
 - 2.3 If J-SPOT determines that there are Locatable Facilities present at the excavation site, it will indicate the presence of those facilities with appropriate Markings.
 - 2.4 If J-SPOT determines that Customer's Facilities are not present at the excavation site, J-

SPOT will either notify Excavator prior to the proposed excavation that Customer's Facilities are not present or mark the excavation site in a manner to indicate that Customer's Facilities are not present at the proposed excavation site.

- 2.5 Customer agrees that J-SPOT will have the right to screen locate areas via prints. Customer also agrees that, notwithstanding anything to the contrary contained in this Agreement, J-SPOT will not be liable for any damages that occur due to incorrect prints.
- 2.6 If J-SPOT determines that there are Unlocatable Facilities at the excavation site, it will notify Customer and Customer will be responsible for determining what course of action should be followed to assure that the Unlocatable Facilities are not damaged by Excavator.
- 2.7 Any maps and records furnished by Customer pursuant to section 3.1 shall remain the property of Customer. J-SPOT agrees to return all copies of such maps and records to Customer upon Customer's written request or at the termination of this Agreement. Unless such maps and records were previously known to J-SPOT free of any obligation to keep them confidential, are given to J-SPOT by a third party not obligated to keep them confidential, or become public without any act or omission of J-SPOT, J-SPOT agrees to keep such maps and records confidential and shall use such maps and records only in the performance of this Agreement except upon such terms as may be agreed upon by Customer or as required by law. This obligation of confidentiality shall survive the termination of this Agreement.
- 2.8 Subject to the terms of section 3.2, J-SPOT shall perform the Services as an independent contractor and as such it has the right to exercise control and supervision of the work and full control over the employment, direction, compensation and discharge of all persons assisting it in performing the Services; that it will be solely responsible for the payment of its employees and for the payment of all federal, state, county and municipal taxes and contributions pertaining thereto; and that it will be responsible for its own acts.
- 2.9 J-SPOT shall not subcontract the Services or any part of the Services without the prior written approval of Customer, which approval Customer may choose to withhold in its sole discretion.
- 2.10 J-SPOT shall comply with the provisions of all applicable permits and licenses relative to the services to be performed hereunder. J-SPOT shall comply with all applicable laws, ordinances and regulations of the United States, the State or States where the Services are performed, and any unit of local government correctly asserting jurisdiction, applicable to the Services (including, but not limited to Worker's Compensation, Unemployment Insurance and Social Security). All J-Spot employees working for the Utility Department in the City of Hastings shall be required to be drug tested by DOT natural gas standards and complete training acceptable to Hastings Utilities for Natural gas operating qualifications standards..

3. Responsibilities of Customer.

- 3.1 Customer agrees to provide J-SPOT with the necessary maps and records to permit J-SPOT to provide the Locate Services. Customer acknowledges that it is Customer's responsibility to keep all applicable maps, records, prints up to date with accurate information. J-SPOT bears no liability for Customer's failure to provide accurate maps, records, and prints, or any damage which results from inaccurate maps, records, and prints.
- 3.2 Customer agrees that it will reasonably cooperate with J-SPOT so that J-SPOT enjoys the same protection under the laws applicable to the Customer regarding Third Party Claims as the Customer would enjoy if it were performing the Services.
- 3.3 Customer will pay J-SPOT for the Locate Services in accordance with the charges set forth on Exhibit B. J-SPOT shall bill Customer based on labor hours per worker. J-SPOT will not be responsible for the accuracy, updates to or the completeness of the definition of the Customer's service area that Customer has provided to the State One Call center.

4. Term, Termination and Exclusive Nature of Agreement.

- 4.1 This Agreement shall be effective as of the ____ day of _____, 20____, and continue for a period of twelve (12) months unless sooner terminated pursuant to section 4.3.
- 4.2 Customer shall use J-SPOT as its exclusive provider of Locate Services for the "Allo Project" excavation and its Subcontractors within the Contract Service Area.
- 4.3 Either party to this Agreement can terminate this Agreement upon thirty (30 Days) days prior written notice to the other. Upon such termination the only liability will be that of the Customer for any Services performed by J-SPOT prior to the effective date of termination.

5. Investigations of Damage to Customer's Facilities.

- 5.1 Should either party to this Agreement become aware of any Damage to Customer's Facilities that occurs after J-SPOT has been asked to perform a Locate with respect to the Customer's Facilities, the party learning of the Damage to Customer's Facilities shall promptly notify the other party. This notification may be made orally. Both parties to this Agreement reserve the right and shall be entitled to investigate any reports of Damage to Customer's Facilities.
- 5.2 J-SPOT will investigate incidents of Damage to Customer's Facilities and provide a written report of its findings to Customer upon request. Such report will contain J-SPOT's determination as to whether the Damage to Customer's Facilities constitutes At Fault Damages. Customer shall have thirty (30) days after receipt of J-SPOT's written report to contest J-SPOT's conclusion. Unless Customer notifies J-SPOT in writing within such period that it disputes J-SPOT's conclusion as to At Fault Damages, J-SPOT's conclusion with regard to that issue shall be deemed binding with respect to this Agreement. If Customer disputes J-SPOT's conclusion, the parties will seek to mutually resolve such dispute and if they cannot such dispute will be resolved in accordance with section 11.1.

5.3 J-SPOT shall be entitled to collect an investigation fee, such investigation fee to be calculated based on the hourly rate for investigation as shown in Exhibit B, for each investigation and written report thereof, which it provides to Customer, unless such report concludes or the parties ultimately agree that the report involves At Fault Damages.

6. Limitation of Liability and Indemnification of Customer by J-SPOT.

6.1 J-SPOT will be responsible for paying Customer's Restoration Costs only if: J-SPOT receives a request to provide Locate Services with respect to Customer's Facilities, and b) the Damage to Customer's Facilities constitutes an At Fault Damage. If the Damage to Customer's Facilities is not At Fault Damages or if Customer's Facilities are Unidentifiable Facilities or Unlocatable Facilities, J-SPOT's only responsibility will be to provide whatever support to Customer it can reasonably provide to establish whether the Excavator or another third party is liable for such Damage to Customer's Facilities. J-SPOT shall indemnify and hold harmless Customer, its agents, employees, officers, directors and shareholders (Customer Indemnities) from and against any and all Third Party Claims to the extent the same arise from At Fault Damages; provided, however, J-SPOT shall not indemnify Customer Indemnities for Third Party Claims arising from Damages that are not At Fault Damages or damages to Unidentifiable Facilities or Unlocatable Facilities or for Third Party Claims that arise from the negligence or willful misconduct of Customer, its agents or employees.

7. Indemnification of J-SPOT by Customer.

7.1 Customer shall indemnify and hold harmless J-SPOT, its agents, employees, officers, directors and shareholders (J-SPOT Indemnities) from and against any and all Third Party Claims to the extent the same arise from Damage to Customer Facilities if the Customer's Facilities were either Unidentifiable Facilities or Unlocatable Facilities or if the Third Party Claims arose from the negligence or willful misconduct of Customer, its agents or employees.

8. Equal Employment.

8.1 J-SPOT acknowledges that it is an equal opportunity employer. We are committed to ensuring equal employment opportunities for all applicants and employees, and to further our commitment not to discriminate on the basis of sex, race, religion, color, national origin, age, disability, genetic information, or veteran status, or any other basis protected by federal, state or local law ("Protected Classifications).

9. Insurance.

9.1 J-SPOT provides the following insurance coverage:

INSURANCE COVERAGE:

LIMITS:

Worker's Compensation	Statutory Limit
Employers' Liability	
Each Accident	\$1,000,000
Disease, Policy Limit	\$1,000,000
Disease, Each Employee	\$1,000,000
Comprehensive General Liability	
including Contractual Liability	\$1,000,000 Each Occurrence
Occurrence Basis BI & PD	\$1,000,000 Each Occurrence
	\$2,000,000 General Aggregate (Each occurrence)
Personal Injury	\$1,000,000 Each Occurrence
Products & Completed Operations	\$2,000,000 Each Occurrence
Automobile Liability	
BI & PD Combined	\$1,000,000 Each Occurrence

10. Dispute Resolution.

10.1 The parties shall attempt in good faith to resolve all disputes (Controversy) promptly by negotiation, as follows. Any party may give the other party written notice of any Controversy not resolved in the normal course of business. Executives of both parties at levels one level above the personnel who have previously been involved in the Controversy shall meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Controversy. If the matter has not been resolved within thirty (30) days from the referral of the Controversy to senior executives, or if no meeting of senior executives has taken place within fifteen days after such referral, the parties hereto reserve to themselves the right to litigate any such disputes in an appropriate forum. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State rules of evidence.

11. Miscellaneous.

11.1 Neither party shall be deemed to be in default of this Agreement to the extent that any delay or failure to perform its obligations, other than the payment of money, results from any cause beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions or strikes. If J-SPOT claims that it is delayed by such a cause, it shall notify Customer immediately and Customer shall be entitled to obtain the Services from any other person until such cause terminates as evidenced by a notice from J-SPOT that

such cause has ended.

- 11.2 This Agreement may only be modified or amended by a written instrument signed by an authorized representative of J-SPOT and Customer. The term "Agreement" shall include any such future amendments or modifications.
- 11.3 This Agreement shall constitute the entire contract between the parties with respect to the subject matter of this Agreement. Customer and J-SPOT each represent that it has read this Contract, agrees to be bound by all terms and conditions contained in this Agreement, and acknowledge receipt of a signed, true exact copy of this Agreement.
- 11.4 Customer agrees that during the Term of this Agreement and for a period of twelve (12) months thereafter, Customer will not hire or solicit for hire any employee of J-SPOT who has been used by J-SPOT within the last twelve months for the purpose of providing the Services to Customer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

City of Hastings Nebraska

J-SPOT Locating Services, LLC

By: _____
(Signature)

By: _____
(Signature)

(Please print)

(Please print)

Title: _____

Title: _____

Exhibit A

J-SPOT Locating Services, LLC shall provide services in the State of NE. in the City of Hastings and its 2 mile jurisdiction as well as the Village of Juniata.

Exhibit B

J-SPOT Locating Services, LLC will charge for services rendered hereunder:

\$ 75.00 Per hour for work not defined as Emergency or Holiday work

\$150.00 per hour for work defined as Emergency or Holiday work

Email Invoices To: City of Hastings Nebraska
ATTN: Deb McCoy
Address: 220 N Hastings Ave
Hastings, NE 68901
Phone: 402-462-3696
Email: ap@hastingsutilities.com, rsekora@hastingsutilities.com

J-SPOT shall render invoices and statements to Customer on a weekly basis. Each statement shall be paid by Customer within thirty (30) days of invoice date.