



City of Grand Island

Tuesday, October 6, 2015

Study Session

Item -1

Discussion on First Amendment to the License Agreement with Unite Private Network

Staff Contact: Tim Luchsinger, Utilities Director

Council Agenda Memo

From: Tim Luchsinger, Utilities Director

Meeting: October 6, 2015

Subject: First Amendment to the License Agreement with Unite Private Network

Presenter(s): Tim Luchsinger, Utilities Director

Background

On May 12, 2009 a License Agreement was approved by City Council with Unite Private Networks to allow for various utility pole attachments across the City for fiber optic cable installation. This agreement is similar to what is in place with other providers of cable service.

Discussion

In July, 2015 Unite Private Networks approached the Grand Island Utilities Department about installing several small cell network antennae to utility poles to expand the capacity of their cell network in Grand Island. Similar projects have been completed in Omaha and Lincoln. An amendment to the existing agreement is necessary since this involves equipment that is above and beyond the scope of the original agreement.

Conclusion

This item is presented to the City Council in a Study Session to allow for any questions to be answered and to create a greater understanding of the issue at hand.

It is the intent of City Administration to bring this issue to a future council meeting.

Pole Attachment License Agreement Amendment

Study Session
October 6, 2015

License Agreement

- License Agreements Provide for Conditions of Use of Public Right-of-Way
- All Cable and Telecommunication Providers are Allowed Attachments to Utility Poles Through License Agreements

FCC Communications Act

- Section 224 of the Act defines the term ‘pole attachment’ as the means of any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.
- Section 253 of the Act prohibits state and local governments from erecting barriers to entry and allows local governments to manage their rights-of-way only on a competitively neutral and nondiscriminatory basis.

Summary of Pole Attachment License Fees

	Payments by Fiscal Year				
	2011	2012	2013	2014	2015
Unite Private Networks	\$ 824	\$ 824	\$ 824	\$ 824	\$ 2,920
Zito Media	\$ 1,560	\$ 1,560	\$ 1,560	\$ 1,560	\$ 1,580
Nebraska Link	\$ -	\$ -	\$ 1,274	\$ 2,548	\$ 2,528
Centurylink	\$ 4,268	\$ 4,292	\$ 4,292	\$ 4,292	\$ 4,310
Charter Communications	\$ 36,020	\$ 36,258	\$ 36,260	\$ 36,260	\$ 36,066
TOTAL	\$ 44,683	\$ 44,946	\$ 46,223	\$ 47,498	\$ 49,419

Typical Pole Arrangements



UPN Proposed Arrangement

Hub and Spoke Distribution of Small Cell Nodes

Relies on equipment placed in EXISTING MACRO CELL SITE



Antenna 25 pounds

Radios

16.5"x9.8"x6.5

22 to 34 lbs

Power For One Radio
(Designs Include Two Radios)

5 Watts RF Transmit Power

1 to 2 Amps at 120 Volts

120 Watts Electrical Power

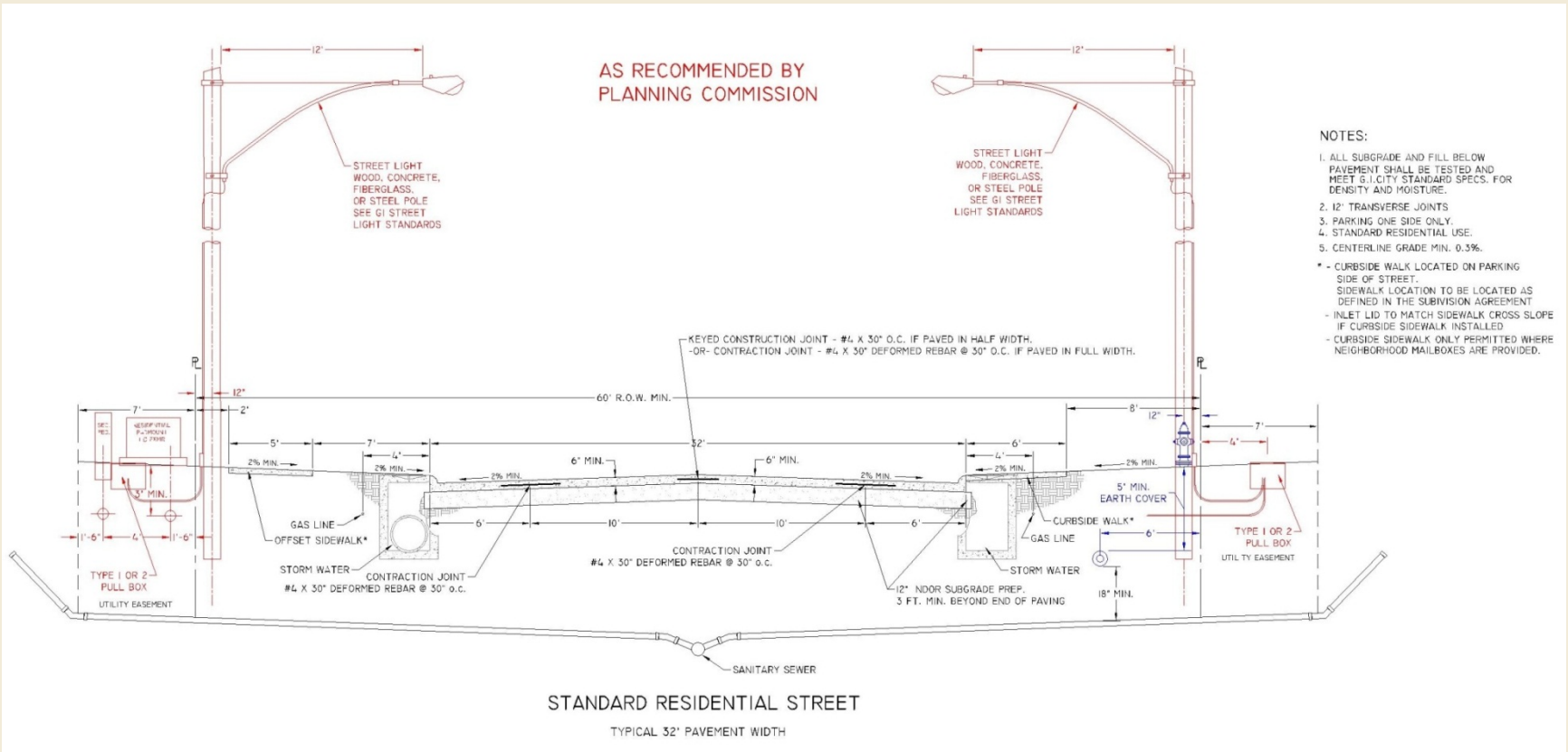
Backhaul: Dark Fiber



Annual Pole Attachment Charge

- OPPD - \$11.44 per attachment
- LES - \$15.50 per provider
- GIUD - \$4.00 per attachment

Standard Residential ROW Arrangement



**First Amendment to
License Agreement**

Between

**The City of Grand Island
P.O. Box 1968
Grand Island, NE 68802-1968**

and

**Unite Private Networks, LLC
120 South Stewart Street
Liberty, Missouri 64068**

Dated _____, 2015

Amendment to License Agreement

This Amendment relates to the License Agreement executed on May 12, 2009, (the “Agreement”) by and between the City of Grand Island, a municipality organized and existing under the laws of the State of Nebraska, having its principal office in the City of Grand Island, Nebraska, hereinafter called Licensor, and Unite Private Networks, LLC, a Delaware Limited Liability Company, having its principal office at 120 S. Stewart Rd., Liberty, MO 64068, hereinafter called Licensee, (collectively, the “Parties”).

Recitals

WHEREAS, Licensee provides communication and education services in the territory in which Licensor provides electric power, which will include the use of Third-Party Facilities, as defined below.

WHEREAS, Licensor owns all poles to be used jointly by the parties.

WHEREAS, the parties wish to provide for Licensee’s use of Licensor’s utility poles.

NOW, THEREFORE, the Parties hereby agree as follows:

Amended Provisions

Article I, Paragraph (B) is hereby replaced with the following language: “Attachments” means messengers, guy strands, aerial wires, cables, amplifiers, associated power supply equipment, Third-Party Facilities, and other transmission apparatus necessary for the proper operation of Licensee’s communications system.

Article I is further amended to include the following paragraph:

(C) “Third-Party Facilities” means equipment and other transmission apparatus necessary for the proper operation of a telecommunications system that is not owned by Licensee, but for which Licensee is responsible for the installation and maintenance of such equipment. Such Third-Party Facilities may require the use of electrical power to be provided by Licensor. Licensee will be charged for the use of said power as prescribed in Appendix 1. The Parties further agree that the Third-Party Facilities may be attached to the Licensor’s poles utilizing a banding method that is approved by Licensor or by penetrating the pole, depending on the style and type of the Third-Party Facilities.

Article II, Scope of the Agreement, Paragraph (A) is hereby replaced with the following language: Subject to the provisions of the Agreement, including the proper execution of APPENDIX 1 AND 2, Licensor hereby issues to Licensee, for any lawful communication/educational purpose, revocable nonexclusive authorization for the attachment of Licensee’s cables, equipment and facilities, including Third-Party Facilities, to Licensor’s poles within the territory in which both Parties nor or hereafter operate.

Appendix 1, Schedule of Fees and Charges shall be replaced with the following:

AMENDED APPENDIX 1

SCHEDULE OF FEES AND CHARGES

THIS AMENDED APPENDIX 1 is, from the effective date hereof, an integral part of the License Agreement, as amended, between the City of Grand Island, therein called Licensor, and Unite Private Networks, LLC, therein called Licensee, dated May 12, 2009 and amended on _____, 2015 (hereinafter called the "Agreement") and contains the fees and charges governing the use of Licensor's poles to accommodate the cable, equipment, facilities and Third-Party Facilities of Licensee in the territory in which both Parties hereto now and hereafter operate.

The effective date of this Amended Appendix 1 is _____, 2015.

POLE ATTACHMENTS

1. ATTACHMENT FEE: \$ 4.00 per pole, per annum.

a. Computation.

For the purposes of computing the total attachment fees due hereunder, the total fee shall be based upon the number of poles to which attachments are actually made pursuant to Article I, Paragraph (B) of the Agreement, on the first day of June and the first day of December of each year. The first advance payment of the annual charge for Licenses granted under this Agreement, as amended, shall be prorated from the date that the attachment is made to the pole to the first regular payment date.

b. Payment Due.

Attachment fees shall be due and payable semiannually, in advance, on the first day of January for the first half of the calendar year next preceding, and on the first day of July for the last half of the calendar year. Failure to pay such fees within twenty (20) days after presentment of the bill therefore or on the specified payment date, whichever is later, shall constitute a default of this Agreement.

c. Termination of License.

Upon termination or surrender of a license granted hereunder, the applicable attachment fee shall be prorated for the period during which the attachment was made to Licensor's pole during the final semiannual period and shall be credited to Licensee; provided, however, that there shall be no proration of attachment fee if the license is terminated as a result of any act or omission of Licensee in violation of this Agreement, as amended.

2. OTHER CHARGES:

a. Computation

(1) All charges incurred by Licensor as a result of inspections, engineering, rearrangements, removals of Licensee's facilities from Licensor's poles and any other work performed for Licensee shall be based upon the full cost and expense to Licensor for performing such work plus the appropriate current overhead rate on the costs incurred in performing such work for Licensee. The cost to Licensor shall be determined in accordance with the regular and customary methods used by Licensor in determining such costs.

(2) The charge for replacement of poles shall include the entire non-betterment cost to Licensor, including the increased cost of larger poles, sacrificed life value of the poles removed, cost of removal less any salvage recovery and the cost of transferring Licensor's facilities from the old to the new poles.

b. Power Usage

The Third-Party Facilities that Licensee is installing on the poles may require the use of electrical power to be billed in accordance with the Electric Rate Schedule established by City Ordinance. Licensor shall provide monthly billing to Licensee for such power usage, which will be paid in accordance with the Agreement, as amended, and this Appendix 1, as amended.

c. Payment Date

All bills for such other charges shall be payable upon presentment to Licensee, and shall be deemed delinquent if not paid within 30 days after presentment to Licensee.

By signing, the undersigned hereby warrants:

- **that they are authorized agents of the Parties;**
- **that they have the authority to enter into this Amendment on behalf of the parties to the original Agreement; and**
- **that they bind the parties to this Amendment and to the terms contained herein.**

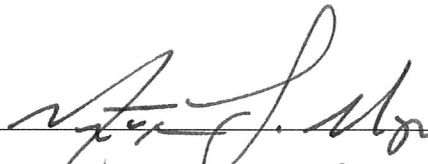
The Parties agree that this contains the entire Amendment relating to the matters covered in this document and does not affect any provisions in the original Agreement other than those noted above. This Amendment shall be binding upon and inure to the benefit of heirs, successors and assigns of the parties to this Amendment.

The Parties make this Amendment under the laws of the State of Nebraska. The Parties agree to adhere to fair business practices and to comply with all federal, state, and local laws and regulations. If any portion of this Amendment shall be held invalid or unlawful for any reason, the invalid portion shall not effect or impair the validity of the remaining portions of the original Agreement or this Amendment.

IN WITNESS WHEREOF, this Amendment has been executed by a duly authorized representative of each Party as of the day and year first written above.

For City of Grand Island, Nebraska:

For Unite Private Networks, LLC:



Print Name

Matthew L. Myers

Print Name

Title

General Counsel

Title

Date

9-3-2015

Date