



City of Grand Island

Tuesday, September 27, 2016

Council Session

Item G-18

**#2016-237 - Approving Pole Attachment License Agreement with
Mobilitie, LLC**

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney

Meeting: September 27, 2016

Subject: Resolution and Proposed Agreement with Mobilitie, LLC

Presenter(s): Jerry Janulewicz, City Attorney

Background

Mobilitie, LLC, a limited liability registered to do business in Nebraska, has applied for approval to place wireless communications antennas and equipment on two poles owned by the City of Grand Island and managed by the City Utilities Department. The poles are located in the public right of way north of Fonner Park near the intersection of Fonner Park Road and Pleasant View Drive. The agreement follows the basic format of agreements previously approved by council which allow private attachments to utility poles, with some specific changes to this agreement that were the result of negotiations between the Mobilitie, LLC and city's legal and utilities departments.

Discussion

The Nebraska Public Service Commission granted to Mobilitie, LLC, a Certificate of Public Convenience and Necessity to provide facilities-based and resold interexchange and local exchange telecommunications services in the state of Nebraska. As such, under Nebraska statutes and rules of the Federal Communications Commission, Mobilitie may utilize public right-of-way as a public utility, subject to the city's rules and regulations. Such use is subject to regulation by the city, however, such regulations cannot operate to prohibit such use and the regulations may not favor one form or provider of telecommunications over another. Mobilitie informed the city that it will not be providing wireless telecommunications to the ultimate consumers of wireless services. Rather, its telecommunications equipment will provide a "backhaul" link between wireless communications equipment used by another company or companies that provide wireless communications services and equipment to the ultimate consumers.

The proposed agreement includes a five year term and provides that its attachments to the poles must meet safety and equipment requirements of the Utilities Department. Any additional pole attachments must the city's regulations and approval process in effect at the time any such new or additional attachments applications are submitted by Mobilitie.

Council is advised that city staff expects increased activity regarding telecommunications issues as this is an area of immense technological change. Due to the difficulty and expense of developing the large cellular antennas and antenna sites seen in the past, the trend is toward smaller antennas placed on utility, street light, and traffic signal poles. This type of system, known as a distributed antenna system or “DAS,” requires multiple antennas to provide the broadband wireless coverage expected by the public. The FCC’s regulations encourage this development and places some limits on the ability of local governments to regulate these systems.

City staff will be reviewing the legal environment with a view toward revising the city’s code sections, as needed, regarding zoning, telecommunications, utility pole attachments, private poles in public right-of-way, and associated matters, balancing the public’s expectation of wireless broadband service with the aesthetic and safety concerns surrounding the use of the right-of-way.

Conclusion

This item is presented to the City Council for approval of the resolution which, if approved, provides authority for its execution of the agreement with Mobilitie, LLC on behalf of the City of Grand Island.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution.

Sample Motion

Move to approve.



License Agreement Between

The City Of Grand Island

&

Mobilitie, LLC

LICENSE AGREEMENT

THIS AGREEMENT, made as of [____], 2016, between the City of Grand Island, hereinafter called Licensor, and Mobilitie, LLC, hereinafter called Licensee.

WITNESSETH

WHEREAS, Licensee provides communication services in the territory in which Licensor provides electric power.

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 and street light poles.

NOW, THEREFORE, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

As used in this Agreement:

(A) Licensor's "poles" means utility poles and street light poles owned by Licensor and poles owned by third parties, to which Licensor is authorized to permit Licensee to attach its facilities.

(B) "Attachments" means antennas, messengers, guy strands, aerial wires, cables, amplifiers, associated power supply equipment and other transmission apparatus necessary for the proper operation of Licensee's communication facilities.

ARTICLE II
SCOPE OF AGREEMENT

(A) 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 purpose, revocable nonexclusive authorization for the attachment of Licensee's cables, equipment and facilities to Licensor's poles within the territory in which both parties now or hereafter operate. This Agreement does not authorize or grant permission to Licensee to affix attachments to traffic control poles or to install Licensee's poles in the public Right-of-Way. Should Licensee desire to install Licensee's poles in the public Right-of-Way, Licensee will adhere to Licensor's reasonable and non-discriminatory regulations and application process for the installation of such poles.

(B) No use, however extended, of Licensor's poles or payment of any fees

or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place or maintain any facilities not needed for its own service requirements, nor to reconstruct, replace or substitute any facilities damaged, destroyed or discontinued.

(C) Licensee acknowledges that Licensor has heretofore entered into, and may in the future enter into, agreements and arrangements with third parties allowing the attachment of their facilities to the poles covered by this Agreement. Licensor agrees that no such agreement or arrangement will, in any way, diminish the scope of the license granted hereby or Licensee's rights hereunder.

(D) Licensee's attachment to poles belonging to a third party shall be subject to any restrictions in the Agreement between that third party and Licensor authorizing the attachment.

ARTICLE III

FEES AND CHARGES

(A) Licensee shall pay to Licensor the fees and charges specified in and in accordance with the terms and conditions of APPENDIX 1.

(B) Nonpayment of any amount due under this Agreement shall constitute a default of this Agreement.

(C) At the expiration of One (1) year from the date of this Agreement and at the end of every one (1) year period thereafter, Licensor may adjust the fees and charges specified in APPENDIX 1 after notice made in writing to Licensee not later than

sixty (60) days before the end of the one (1) year period or the end of any subsequent one (1) year period thereafter. Any such adjustment shall reflect only changes in Licensor's costs, determined in a manner consistent with the determination of the fees and charges specified in APPENDIX 1.

ARTICLE IV

SPECIFICATIONS

(A) Licensee's fiber, cable, equipment and facilities shall be placed and maintained in accordance with the requirements and specifications of APPENDIX 2. Licensor shall have the right, upon reasonable notice to Licensee, to make reasonable changes and amendments to APPENDIX 2. Unless different standards are specified herein, the provisions of the National Electrical Code and the National Electrical Safety Code, and any amendments thereto or replacements thereof, shall be applicable.

ARTICLE V

LEGAL AUTHORITY

(A) The parties shall at all times observe and comply with, and the provisions of this Agreement are subject to all laws, ordinances and regulations which in any manner affect the rights and obligations of the parties under this Agreement, so long as such laws, ordinances or regulations remain in effect.

ARTICLE VI

ISSUANCE OF LICENSES

(A) Upon execution of this Agreement, the parties will prepare a list indicating to which of the Licensor's poles Licensee's facilities are then attached; Licensee shall be deemed to have a license hereunder for attachment to all such poles. Before attaching to additional poles of Licensor, Licensee must make application for and receive license therefore in the form of Exhibit A, hereto.

(B) Licensor shall have the right at any time to issue reasonable rules and regulations concerning submission of applications and attachments to poles of Licensor, which rules and regulations shall be binding upon submission of a copy thereof to Licensee.

ARTICLE VII

POLE REPLACEMENTS, RESTRICTIONS AND REARRANGEMENTS

(A) In the event Licensor determines that the space on any pole to which Licensee wishes to make attachment is required for its exclusive use or that the pole may not reasonably be rearranged or replaced, Licensor may refuse attachment to that pole.

(B) In the event Licensor determines that any pole to which Licensee wishes to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to support or accommodate the additional facilities of Licensee in accordance with the specifications set forth in APPENDIX 2, Licensor will indicate on the application (Exhibit A) the changes necessary to provide adequate pole space and the estimated cost thereof to Licensee and return the application to Licensee. If

Licensee wishes that such changes be made and returns the application marked to so indicate, Licensor will make such changes, including the replacement of inadequate poles, and Licensee shall pay Licensor in accordance with the terms of APPENDIX 1. Licensee shall also reimburse the owner or owners of other facilities attached to said poles for any expense incurred by it or them in transferring or rearranging said facilities to accommodate Licensee's attachments.

(C) Should Licensor need for its own service requirements the space occupied by Licensee's attachments on any of Licensor's poles, Licensee will be notified that it shall either surrender its license for that pole and, at its own expense, vacate the space by removing its attachments, or it shall authorize Licensor to replace the pole at the expense of Licensee, in the same manner as stated in the preceding Paragraph (B) covering the replacement or rearrangement of poles when required to accommodate Licensee's attachments; or, if Licensor advises Licensee that Licensee's desired attachments can be accommodated on present poles of Licensor by rearranging Licensor's facilities thereon, Licensee shall authorize Licensor to make such arrangements at the expense of Licensee. Licensee shall also reimburse the owner or owners of other facilities attached to said poles for any expense incurred by it or them in transferring or rearranging said facilities to accommodate Licensee's attachments. Any strengthening of poles will be provided at the expense of Licensee in accordance with the specifications in APPENDIX 2.

(D) When Licensor receives multiple applications for attachment to any pole that must be replaced or rearranged to provide sufficient space, Licensor will, to the extent that it is practical to do so, prorate the common expenses of engineering, rearrangement and replacement, if any, among all the applicants. Licensee shall

be bound by Licensor's determination as to any such proration of costs to Licensee.

(E) Whenever it is necessary for Licensor to make pole replacements or rearrangements in order to accommodate Licensee's cable, equipment and facilities, Licensor will endeavor to have such work performed as soon as is practicable upon consideration of Licensor's service requirements, but only after issuance of the license to, and acceptance of responsibility for costs by, Licensee.

(F) Licensee shall provide all anchors and guying necessary for its facilities. If the presence of Licensee's facilities on Licensor's poles make it necessary for Licensor to modify its existing guying or add new guying to its poles, then the cost of such modifications or additions shall be reimbursed by Licensee.

(G) When Licensor's facilities occupy space on a pole owned by a third party, Licensee shall reimburse Licensor for any expense incurred in transferring or rearranging its facilities thereon, if such transfer or rearrangement is the result of Licensee's use or proposed use of said pole.

ARTICLE VIII

CONSTRUCTION AND MAINTENANCE OF FACILITIES

(A) Licensee shall, at its own expense, make and maintain its pole attachments in a safe condition and in thorough repair, and in a manner reasonably acceptable to Licensor, and so as not to conflict with the use of Licensor's poles by Licensor or by other authorized users thereof, or interfere with other facilities thereon or which may from time to time be placed thereon. If reasonably necessary to satisfy any of the above conditions, Licensee shall, upon 30 days' notice from Licensor and at its own expense, relocate or replace its facilities on Licensor's poles, or transfer them to

substituted poles, or perform any other work in connection with its facilities that may reasonably be required by Licensor; provided, however, that in cases of emergency, Licensor may arrange to relocate or replace the attachments placed on its poles by Licensee, transfer them to substituted poles or perform any other work in connection with Licensee's facilities that may be required in the maintenance, replacement, removal or relocation of Licensor's poles or of the facilities thereon, or which may be placed thereon, or for the service needs of Licensor, and Licensee shall reimburse Licensor for the expense thereby incurred; provided further, however, that Licensee shall have no obligation to relocate, replace, or transfer its facilities solely to accommodate the service needs of any person other than Licensor, unless such person shall make arrangements, satisfactory to Licensee, to reimburse Licensee for such work.

(B) All tree trimming required on account of Licensee's attachments shall be done by Licensee at its sole risk and expense and in a manner satisfactory to Licensor. The parties may agree that Licensor shall conduct tree trimming and be reimbursed by Licensee.

ARTICLE IX

TERMINATION OF LICENSES

(A) Upon notice from Licensor to Licensee that the use of any pole is not authorized by Federal, State, County authorities or private property owners, the license covering the use of such pole shall immediately terminate and shall be surrendered and Licensee shall remove its fiber, cables, equipment and facilities at once from the affected pole or poles at Licensee's expense.

(B) Licensee may at any time remove its facilities from any pole of Licensor, but shall immediately give Licensor written notice of such removal and surrender of License in the form of Exhibit B attached hereto and made a part hereof. If Licensee surrenders its license for a pole but fails to remove its facilities from that pole within thirty (30) days, Licensor shall have the right, upon reasonable notice, to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's facilities. In the event that Licensee's fiber, cables, equipment and facilities shall be removed from any pole as provided by this Article, no attachment shall again be made to such pole unless Licensee shall have first complied with all of the provisions of this Agreement as though no such attachment had previously been made.

(C) Licensor shall have the right, upon written notice, to terminate the license for a particular pole:

- (1) If, in Licensor's reasonable judgment, its service needs require full utilization of that pole; or
- (2) If changes in the physical facilities, space or location requirements or service requirements of Licensor render such poles inadequate to support the facilities of Licensee; provided, however, that in such event Licensee may request the substitution of suitable poles upon the same terms and conditions as would be applicable under ARTICLE VII.

ARTICLE X

INSPECTIONS OF LICENSEE'S INSTALLATIONS

(A) Licensor reserves the right to make periodic inspections of any part of the fiber, cable, equipment and facilities of Licensee on its poles, and Licensee shall reimburse Licensor for the expense of such inspections, provided that, if Licensee's facilities which are to be inspected are co-located on a pole with the equipment of another party, the cost of such inspection shall be divided among the parties with facilities on said inspected pole. Inspections will be made no more than once a year and only upon notice to Licensee unless, in Licensor's judgment, such inspections are required for reasons involving safety or are required because of Licensee's violation of the terms of this Agreement. The charge for the inspection shall be in accordance with the terms and conditions of APPENDIX 1. The making of such inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.

(B) If any fiber, cable, equipment and facilities of Licensee shall be found on a pole for which no license is outstanding, Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may (1) impose a charge, and (2) require Licensee to remove such fiber, cable, equipment and facilities forthwith or Licensor may remove them without liability and the expense of removal shall be borne by Licensee; provided, however, that if Licensee shall forthwith make application for a license in the form of Exhibit A hereto, Licensor will not require such removal unless necessary for Licensor's service requirements and, except in the case of an emergency, will not remove Licensee's facilities without first giving 30 days notice to Licensee. For the purpose of determining the charge, absent satisfactory evidence to the contrary, the unlicensed use shall be treated as having existed for a period of two (2) years prior to its discovery or for the period beginning with the date of this Agreement, whichever

period shall be the shorter; and the fee, at the appropriate rate as shown in APPENDIX 1, for each year and for any portion of a year contained in such period, shall be due and payable forthwith. Any such fee imposed by Licensor shall be in addition to its rights to any other sums due and payable and to any claims or damages under this Agreement or otherwise. No act or failure to act by Licensor with regard to said fee or said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise.

ARTICLE XI

LIABILITY AND DAMAGES

(A) Licensor shall exercise precaution to avoid damaging the communication fiber of the Licensee and shall make an immediate report to the Licensee of the occurrence of any such damage caused by its employees, agents or contractors. Licensor agrees to reimburse the Licensee for all reasonable costs incurred by the Licensee for the physical repair of such facilities damaged by the negligence of Licensor; provided, however, Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's communication fiber, or for any special, indirect, or consequential damages.

(B) Licensee shall exercise precaution to avoid damaging the facilities of Licensor and of others attached to poles or anchors, and shall make an immediate report to the owner of facilities so damaged; and Licensee assumes all responsibility for any and all direct loss and from such damage caused by Licensee's employees, agents or contractors.

(C) Notwithstanding anything in this Agreement to the contrary, no party shall be liable for consequential, special, incidental or indirect damages, regardless of whether said claim is based upon contract, warranty, tort (including negligence and strict liability) or other theory of law.

(D) Licensee shall indemnify, protect and save harmless the Licensor from any and all damages and costs, including reasonable attorney fees, incurred by the Licensor as a result of acts by the Licensee, its employees, agents or contractors, including but not limited to the cost of relocating poles, anchors or guys resulting from a loss of right-of-way or property owner consents and/or the cost of defending those rights and/or consents.

(E) The Licensee shall indemnify, protect and save harmless the Licensor from any and all claims, demands, causes of actions and costs, including attorney fees, for damages to property and injury or death to persons, including but not limited to payments under any Workmen's Compensation Law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, or use or removal of Licensee's facilities or by their proximity to the facilities of other parties attached to a pole or anchor, or by any act or omission of the Licensee's employees, agents or contractors on or in the vicinity of the Licensor's poles, anchors or guys.

(F) The Licensee shall indemnify, protect and save harmless the Licensor from any and all claims, demands, causes of action and costs, including attorney fees, which arise directly or indirectly from the construction and operation of Licensee's facilities, including but not limited to taxes, special charges by others and from and against all claims, demands and costs, including attorney fees, for infringement of

patents with respect to the manufacture, use and operation of Licensee's facilities in combination with poles, anchors, guys or otherwise.

(G) Licensee shall promptly advise the Licensor of all claims relating to damage of property of injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, from the erection, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities. Copies of all accident reports and statements made by the Licensee or others shall be furnished promptly to the Licensor.

(H) Licensor shall promptly advise the Licensee of all claims relating to damage of property of injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, from the erection, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities. Copies of all accident reports and statements made by the Licensor or others shall be furnished promptly to the Licensee.

ARTICLE XII

INSURANCE

(A) Licensee shall obtain and maintain insurance, including endorsements insuring the indemnification provisions of this Agreement, issued by an insurance carrier satisfactory to Licensor to protect the Licensor and joint user from and against all claims, demands, causes of actions, judgments, costs, including attorney fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury or damage as covered in this Agreement including ARTICLE XI preceding.

(B) The amount of such insurance:

Insurance Coverage

Limits

- | | | |
|----|---|--|
| 1. | Worker's Compensation | Statutory |
| | Employer's Liability: | |
| | a. Bodily Injury by Accident | \$ 500,000 each accident |
| | b. Bodily Injury by Disease | \$1,000,000 policy limit |
| | c. Bodily Injury by Disease | \$ 500,000 each employee |
| 2. | Comprehensive Automobile | |
| | a. Bodily Injury and Property
Damage Combined Single Limit | \$1,000,000 |
| 3. | Comprehensive General Liability | |
| | a. Bodily Injury and Property
Damage Combined | \$1,000,000 each person
\$2,000,000 aggregate |

(C) Licensee shall submit to Licensor certificates by each company insuring Licensee upon each new issuance or renewal to the effect that is has insured Licensee for all liabilities of Licensee covered by this Agreement and that it will not cancel or change any such policy of insurance issued to Licensee except after 60 days written notice to Licensor.

(D) All insurance required in accordance with (B) and (C) preceding must be effective before Licensor will authorize attachment to a pole and/or anchor, utilization of an anchor/guy strand or occupancy of a conduit system and shall remain in force until such Licensee's facilities have been removed from all such poles, anchors, or conduit systems. In the event that the Licensee shall fail to maintain the required insurance coverage, Licensor may pay any premium thereon falling due, and the Licensee shall forthwith reimburse the Licensor for any such premium paid.

ARTICLE XIII

LICENSE NOT EXCLUSIVE

Nothing herein contained shall be construed as a grant of any exclusive license, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any poles covered by this Agreement.

ARTICLE XIV

ASSIGNMENT OF RIGHTS

(A) Licensee shall have the right to assign this Agreement to any parent, subsidiary, affiliate, or any person, firm, or corporation that shall control, be under control of, or be under common control with Licensee, or to any entity to which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee that are subject to this Agreement.

(B) Except for the right to assign pursuant to Article XIV(A), Licensee shall not assign or transfer the privileges contained in this Agreement without the prior consent in writing of Licensor. Licensor shall not unreasonably withhold such consent.

(C) Notwithstanding the foregoing, Licensee may provide capacity across Licensee's communications facilities to a third party without the consent required in this Article XIV, so long as Licensee retains control over and remains solely responsible for, such communications facilities.

(D) Subject to the provisions of Paragraphs (A) and (B) hereof, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

ARTICLE XV

TERMINATION OF AGREEMENT

(A) If Licensee breaches any of the terms or conditions of this Agreement or defaults in any of its obligations under this Agreement and shall fail within thirty (30) days after written notice from Licensor to correct such default or breach, Licensor may, at its option, forthwith terminate this Agreement and all licenses granted hereunder, or the licenses covering the poles as to which such default or breach shall have occurred. Notwithstanding the foregoing, if, at the end of this thirty (30) day period, Licensee is making diligent efforts to correct such default or breach, Licensor shall provide Licensee an additional sixty (60) days to correct such default or breach. If Licensee fails to correct such default or breach at the end of this sixty (60) day period Licensor may, at its option, forthwith terminate this Agreement and all licenses granted hereunder, or the licenses covering the poles as to which such default or breach shall have occurred.

(B) Notwithstanding Article XV(A), if Licensee's breach results in a situation in which, in Licensor's reasonable judgment, public safety is endangered, Licensor may take steps, at Licensee's sole cost and expense, to cure such breach and ensure public safety. Should Licensor take such steps, Licensor may send Licensee an invoice detailing the cost of such steps. Upon receipt of this invoice, Licensee shall have sixty (60) days to reimburse Licensor for the cost of such steps. If Licensee fails to reimburse Licensor within these sixty (60) days, Licensor may terminate this Agreement and all licenses granted hereunder, or the licenses covering the poles as to which such default or breach shall have occurred.

(C) Licensor shall have the right to terminate this entire Agreement or individual licenses granted hereunder, without notice

(1) If the Licensee's facilities are maintained or used in

violation of any law or in aid of any unlawful act or understanding;
or

(2) If any permit or other authorization which may be required by any governmental authority for the operation or maintenance of Licensee's fiber, cables, wire, equipment and facilities on Licensor's poles is revoked, denied, or not granted before the date when possession of such permit or authorization becomes a condition of continued operations; or

(3) If Licensee defaults under ARTICLE IV.

(D) Licensee may terminate this Agreement at any time by removing its facilities from all of Licensor's poles, as provided in ARTICLE IX (B).

ARTICLE XVI

TERM OF AGREEMENT

(A) This Agreement shall, unless terminated in accordance with its provisions, continue in effect for an initial term of five years. Licensor or Licensee may terminate this Agreement at the end of the initial term by notifying Licensee in writing at least one (1) year prior to the end of that term. If not so terminated, this Agreement shall continue in force upon the same terms and conditions for a further term of five (5) years, and for successive one (1) year terms thereafter, until terminated by Licensor or Licensee at the end of any such term upon not less than one (1) year's written notice to the other party. Upon termination of the Agreement in accordance with any of its terms, all outstanding licenses shall terminate and Licensee shall immediately remove its fiber, cables, equipment and facilities from all poles of Licensor. Upon Licensee's failure to do so,

Licensor shall have the right to remove Licensee's fiber, cable, equipment and facilities at the cost and expense of Licensee and without any liability therefore.

(B) Licensor hereby reserves the right to amend, revise, modify, or restate its ordinances, rules, regulations and procedures regarding pole attachments and pole attachment licensing, telecommunications facilities, and private use of public right-of-way.

(C) Notwithstanding anything in this Agreement to the contrary, applications submitted by Licensee for permission to install new or additional attachments to Licensor's poles or new or additional use of the public right-of-way shall be subject to and governed by the ordinances, rules, regulations and procedures in effect at the time the application is received by Licensor.

ARTICLE XVII

NOTICES

Notices under this Agreement may be given by posting the same in first class mail to the Licensee as follows:

Legal Department
Mobilitie, LLC
2220 University Drive
Newport Beach, CA 92660

and to the Licensor as follows:

Mayor
City of Grand Island

P.O. Box 1968

Grand Island, NE 68802-1968

ARTICLE XVIII

RECORDS

The Licensee shall file a complete set of as-built records for its communication system, including all extensions and modification in the Grand Island Electric Utilities Department for the area where the Licensor provides electric power.

WITNESS (ATTEST)

MOBILITIE, LLC

BY _____

Title _____

WITNESS (ATTEST)

CITY OF GRAND ISLAND, NEBRASKA,

A Municipal Corporation

BY _____

Title: Mayor

Signature Page for License Agreement

APPLICATION AND POLE ATTACHMENT LICENSE

*Pole Attachment

Application No. _____

Date _____

(Licensee)

(Street Address)

(City and State)

CITY OF GRAND ISLAND UTILITIES DEPARTMENT:

In accordance with the terms and conditions of the License Agreement between us, dated _____, application is hereby made for a nonexclusive license to attach communications facilities to _____ poles, _____ anchors, and/or utilize _____ anchor/guy strands.

Pole Location: _____

Equipment to be attached: _____

Description of requested attachment: _____

Pole Location: _____

Equipment to be attached: _____

Description of requested attachment: _____

Pole Location: _____

Equipment to be attached: _____

Description of requested attachment: _____

USE REVERSE SIDE FOR ADDITIONAL LOCATIONS

(Licensee)

By: _____

Title: _____

Phone Number: _____

* Individual applications to be numbered in sequential ascending order by License.

Pole Attachment License Number _____ is hereby granted to attach the communications facilities described in this application to _____ poles, _____ anchors, utilize _____ anchor/guy strands.

CITY OF GRAND ISLAND UTILITIES DEPARTMENT
(Licensor)

By: _____

Title: _____

Phone Number: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
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Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

Pole Location: _____
Equipment to be attached: _____
Description of requested attachment: _____

NOTIFICATION OF POLE ATTACHMENT ABANDONMENT

* Abandonment Notice No. _____

Date _____

(Licensee)

(Street Address)

(City and State)

CITY OF GRAND ISLAND UTILITIES DEPARTMENT:

In accordance with the terms and conditions of the License Agreement between us, dated _____, notification is hereby made of abandonment of pole attachments of communications equipment as listed below:

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

(Use reverse side for additional locations)

(Licensee)

By: _____

Title: _____

Phone Number: _____

CITY OF GRAND ISLAND UTILITIES DEPARTMENT
(Licensor)

By: _____

Title: _____

Phone Number: _____

*Individual abandonment notifications to be numbered in sequential ascending order by Licensee.

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

Pole Location: _____

APPENDIX 1

SCHEDULE OF FEES AND CHARGES

THIS APPENDIX 1 is, from the effective date hereof, an integral part of the License Agreement between the City of Grand Island, herein called Licensor, and Mobilitie, LLC, therein called Licensee, dated _____, (hereinafter called the Agreement), and contains the fees and charges governing the use of Licensor's poles to accommodate the fiber, cable, wire equipment and facilities of Licensee in the territory in which both parties hereto now or hereafter operate. The effective date of this APPENDIX 1 is _____.

POLE ATTACHMENTS

1. ATTACHMENT FEE: \$6.00 per pole per annum.

a. Computation:

For the purpose 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, 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 shall be prorated from the date that the attachment is made to the pole to the first regular payment date.

b. Payment Date:

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 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 an attachment fee if the license is terminated as a result of any act or omission of Licensee in violation of this Agreement.

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 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.

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.

DATED: _____

WITNESS (ATTEST)

Mobilitie, LLC

BY _____

Title: _____

WITNESS (ATTEST)

CITY OF GRAND ISLAND, NE
A Municipal Corporation

BY _____

Title: Mayor

APPENDIX 2

ATTACHMENTS TO POLES

THIS APPENDIX 2 is, from the effective date hereof, an integral part of the License Agreement (hereinafter called the Agreement) between the City of Grand Island, therein called Licensor, and Mobilitie, LLC, therein called Licensee, dated _____ and contains certain minimum requirements and specifications governing the attachment of fiber, cables, equipment and facilities of Licensee (sometimes called Attachments in this Appendix) to poles of Licensor in the territory in which both parties hereto now or hereafter operate. The effective date of this Appendix 2 is _____.

GENERAL

1. The Licensee is responsible for the proper design, construction and maintenance of its Attachments. Attachments generally will be limited to strand support cable, wire, service drops, terminals and necessary appurtenances deemed by Licensor to be suitable for pole mounting.

2. Any rearrangement of Licensor's facilities or replacement of poles required to accommodate Licensee's Attachments shall be done by Licensor or a contractor authorized by Licensor.

3. The fees and charges specified in APPENDIX 1 shall be applicable, (to all licenses granted to Licensee hereunder) without regard to the methods of attachment used.

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4. Licensee's Attachments shall be plainly identified by appropriate marking, satisfactory to Licensor.

5. Licensee's workmen shall assure themselves that any pole to be climbed has sufficient strength or is adequately braced or guyed to support the weight of the workmen.

6. All requirements of the National Electrical Safety Code referred to herein shall mean the 2007 Edition of such code, or any later amendment or replacement thereof, and shall include any additional requirements of any applicable Federal, State, County or Municipal Code. References to simply the Safety Code, or to N.E.S.C., have the same meaning.

7. While many of the standards and technical requirements for Licensee's cable, equipment and facilities are set forth herein, Licensor reserves the right to specify the type of construction required in situations not otherwise covered in this Appendix. In such cases, Licensor will in its discretion furnish to Licensee written material which will specify and explain the required construction.

8. Licensee's Attachments shall not use or carry voltages or currents in excess of the limits prescribed for cable television conductors by the National Electrical Safety Code Section 230 F1 & F2. However, all parts of the Licensee's Attachments carrying voltages in excess of 60 volts AC (rms) to ground or 135 volts DC to ground, except for momentary signaling or control voltages, shall be enclosed in an effectively grounded sheath or shield. All energized parts of Licensee's Attachments shall be suitably covered to prevent accidental contact to the general public, Licensor's workmen or workmen of another licensee having facilities on the same pole.

9. Licensor shall determine whether Licensee's Attachments cause or may cause electrical interference with Licensor's or any other Licensee's communication facilities. Licensee shall, on demand of the Licensor, correct immediately at Licensee's expense any such interference including, if necessary, removal of the Attachments causing the interference.

10. No Attachment shall use the earth as the sole conductor for any part of the circuit.

11. Licensee shall not circumvent Licensor's or any other licensee's corrosion mitigation measures (e.g., short circuit insulating joints).

GROUNDING AND BONDING

12. All power supplies shall be grounded. The neutral side of the power drop shall be continuous and not fused. The neutral line shall also be bonded to any power supply cabinet. Any cabinet shall be connected to an earth ground at the pole. In areas where the Licensor has a ground wire (which is connected to the Licensor's neutral) running down the pole, the cabinet can be connected to it. Where a Licensor vertical ground wire is not available, the Licensee must place a ground rod. All cabinets, housings and metal socket bases on a common pole shall be bonded to each other, to the Licensor's strand and to the Licensee's strand.

13. Where two or more aerial suspension strands are located on the same pole, the suspension strands shall be bonded together. Licensee shall attach the bonding wire to its strand and leave a sufficient length of wire to complete the bond. Where the strands of two or more licensees are to be bonded together, the licensee

placing the last strand, if authorized to do so by the other licensees, shall make both connections. Where such authorization is not granted by the licensee owning the existing strand, Licensee shall attach the bonding wire to its strand and leave enough wire to permit making a connection and shall be responsible for completing the bonding. Licensee may bond its cable sheath to Licensor's common neutral, vertical ground wires, and ground rods at whatever frequency Licensee desires. All vertical ground wires shall be covered by a molding. Ground rods installed by Licensee shall be in accordance with National Electrical Safety Code.

14. Strands attached to the same bolt do not have to be bonded.

15. Where a Licensee's strand leaves a pole which carries other strands supporting cable television cables, and Licensee's strand continues to a pole carrying power facilities of Licensor, Licensee's fiber cable shall be:

- (A) Bonded to other cable television strands on the pole that it leaves;
- (B) Bonded to an effective ground preferably within two spans but not greater than ten (10) spans after leaving said pole, and;
- (C) Bonded with a No. 6 solid, soft-drawn copper wire. The wire must be attached to the strand with an approved clamp, such as a lashing wire clamp, designed for attachment to each specific size of strand involved (for example, Chance Lashing Wire Clamp, Catalog Number 9000, or equivalent).

17. Strands supporting drop wire shall be bonded to the cable suspension strand.

18. Any connecting or bonding to Licensor's facilities shall be done by Licensor and the connecting or bonding wire shall be sufficient length to allow Licensor to complete the connection or bond.

CLEARANCES

19. Licensee's Attachments are subject to cable television facilities clearances and shall meet all of the pertinent clearance requirements of the National Electric Safety Code. Safety Code rules covering the most commonly encountered conditions are listed below:

	<u>NESC 2007 Edition General Rule</u>
(A) Vertical clearance on poles jointly occupied by communication fiber, cable television facilities, and power facilities	235
(B) Mid-span clearance between communication fiber, cable television facilities, and power facilities	235
(C) Crossing clearances of facilities carried on different supports	233
(D) Clearances from street light brackets and associated wiring	238
(E) Clearances of conductors from another line	233

(F)	Clearances of vertical and lateral conductors from other wires and surfaces on the same support	239
(G)	Clearances in any direction from line conductors and supports, and to vertical or lateral conductors, span or guy wires, attached to the same support	235
(H)	Vertical clearance of wires above ground or rails	232
(I)	Structures for overhead lines	280
	1. Supporting structure items one (1) thru five (5)	
	2. Unusual conductor supports	

LOCATION AND SPACING

20. Licensor shall specify the location of Licensee’s Attachments on each pole, including the location of Licensee’s riser cables. Where Licensor has installed its own communication circuits (supervisory control circuits) for operation of its electric system, clearance of Licensee’s facilities from these communication circuits shall be the same as from Licensor’s common neutral conductor.

21. The minimum vertical separation between Licensee's strand, and the strand of another licensee when located on same side of pole shall be twelve (12) inches. Licensee's strand shall be located at a point on the pole that provides the minimum clearance allowed by the National Electric Safety Code from the ground. Licensee may, however, agree with another licensee to reduce the separation between their respective strands. Separation between the bolt holes must be in any event at least four (4) inches.

22. Licensee shall be required to place all of its Attachments, so not to interfere with climbing space, as defined in the National Electrical Safety Code.

23. Through bolts may not be placed less than ten inches from the top of the pole. When through bolts present a hazard to climbing; i.e., extend more than two inches beyond the nut, they shall be trimmed to a safe length.

24. Pole steps will not be allowed on any Licensor pole, except to specific cases judged to be in the interest of safety by the Licensor.

LOADING

25. The Licensee shall furnish to Licensor as a part of Exhibit A to this Agreement the details as to the ultimate strength, tension at 60F, and maximum tension in its suspension strand or conductor under the applicable storm loading specifications in Code.

26. Licensee shall furnish to Licensor as a part of Exhibit A to this Agreement details as to the weight and size of its fiber/cables, suspension strands and/or conductors, with and without the ice loading, as specified by the National Electrical Safety Code (Rule 251) or appropriate local code for the loading area concerned. NESC Rule 250 covers the degree of loading (light, medium, heavy) appropriate in different sections of the country. Where a local code designates a heavier degree of loading than the NESC, the local requirements shall govern.

27. Licensee may lash its fiber/cable to the strand of another licensee, where this is acceptable to all other licensees involved and to Licensor. Maximum tension of Licensee's strand shall not exceed 60% of the breaking strength under applicable storm loading, as defined by the National Electrical Safety Code (Rule 251). Where local codes designate a heavier degree of loading than the NESC, the local requirements shall govern.

GUYING

28. Guying will be required on poles where the total unbalanced load, including the tension due to Licensee's Attachments under the appropriate storm loading prescribed by the National Electrical Safety Code (Rule 251), exceed 200 pounds unless the pole was designed as an unguyed corner pole and the pole has adequate strength and stability, in the opinion of Licensor, to withstand the additional load.

29. Guys, when required, shall be of such material and dimensions as to provide adequate strength to withstand the transverse loads specified in the National Electrical Safety Code (Rule 252B), and the longitudinal load assumed in the Code

(Rule 252C). Guys on poles which also support power facilities shall be in compliance with the National Electrical Safety Code (Rule 261C and 282).

30. Guy guards shall be installed in compliance with NESC (Rule 282E).

31. Licensee may attach its guy to Licensor's anchor rods only where Licensor specifically authorizes it in writing. Should it be necessary to replace the anchor at a later date to provide added strength for Licensor's requirements, the anchor shall be replaced at Licensee's expense if the existing anchor rod would support Licensor's Attachments without regard to Licensee's guy.

32. More than one licensee may use a common guy to sustain their combined load.

33. Guys shall be insulated as specified in the Safety Code (Rules 215 and 283) and at any location where Licensee's guy parallels Licensor's guy with insulator. Licensee's guys shall not short circuit Licensor's guy insulators.

34. Cross guying of Licensee's guys with Licensor's guys is not allowed.

35. Material used for guys shall be compatible from a corrosion standpoint with the hardware to which it is attached.

DATED: _____

WITNESS (ATTEST)

Mobilitie, LLC

BY _____

Title:

WITNESS (ATTEST)

CITY OF GRAND ISLAND, NEBRASKA

A Municipal Corporation

BY _____

Title: Mayor

Doc #01-2961585.5

RESOLUTION 2016-237

WHEREAS, Mobilitie, LLC, (“Mobilitie”) requested permission from the City to place wireless telecommunications equipment on two city utility poles located near the intersection of Fonner Park Road and Pleasant View Drive; and

WHEREAS, Mobilitie intends to utilize the wireless telecommunications equipment to provide a “backhaul” link between wireless communications equipment used by another company or companies that provide wireless communications services and equipment to the ultimate consumers; and

WHEREAS, The Nebraska Public Service Commission granted to Mobilitie, LLC, a Certificate of Public Convenience and Necessity to provide facilities-based and resold interexchange and local exchange telecommunications services in the state of Nebraska, and

WHEREAS, Mobilitie executed a proposed license agreement for the placement of attachments on City’s utility poles as specified in its application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the License Agreement by and between the City of Grand Island and Mobilitie, LLC should be and hereby is approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, September 27, 2016.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 23, 2016	☐ City Attorney