



# City of Grand Island

Tuesday, October 13, 2015

Council Session

## Item G-5

**#2015-273 - Approving First Amendment to the License Agreement  
with Unite Private Network**

Staff Contact: Tim Luchsinger, Stacy Nonhof

# **Council Agenda Memo**

**From:** Tim Luchsinger, Utilities Director  
Stacy Nonhof, Assistant City Attorney

**Meeting:** October 13, 2015

**Subject:** License Agreement Amendment with Unite Private Networks for Power Pole Attachments

**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.

## **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 a future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve the License Agreement Amendment with Unite Private Networks for Power Pole Attachments.

## **Sample Motion**

Move to approve the License Agreement Amendment with Unite Private Networks for Power Pole Attachments.

**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 License 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.

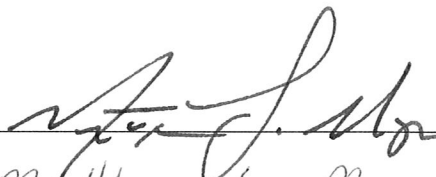
For City of Grand Island, Nebraska:

For Unite Private Networks, LLC:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Matthew L. Myers  
Print Name  
\_\_\_\_\_  
General Counsel  
Title  
\_\_\_\_\_  
9-3-2015  
Date

RESOLUTION 2015-273

WHEREAS, on May 12, 2009 City Council approved a License Agreement with Unite Private Networks to allow for various utility pole attachments across the City for fiber optic cable installation; and

WHEREAS, in July, 2015 Unite Private approached Grand Island Utilities concerning the installation of several small cell network antennae to utility poles to expand the capacity of their cell network in Grand Island; and

WHEREAS; an amendment to the existing agreement is necessary since this involves equipment that is above and beyond the scope of the original agreement, and

WHEREAS; the Legal Department has reviewed and approved the Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the First Amendment to the License Agreement with Unite Private Network is approved, and the Mayor is hereby authorized to sign the Amendment on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 13, 2015.

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Jeremy L. Jensen, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 9, 2015	☐ City Attorney