

City of Scottsbluff, Nebraska

Monday, October 19, 2015

Regular Meeting

Item Reports3

Council to consider a Right of Way Agreement for Fiber Optic Cables with Unite Private Networks, LLC and authorize the Mayor to execute the agreement.

Staff Contact: Nathan Johnson, Assistant City Manager

CITY OF SCOTTSBLUFF, NEBRASKA

A RIGHT-OF-WAY AGREEMENT FOR FIBER OPTIC CABLES

Execution of this Right-of-Way Agreement (“Agreement”) hereby grants Unite Private Networks, LLC, a Delaware Limited Liability Company, (“Grantee”) the right to install, operate, and maintain fiber optic cables and certain Third-Party Facilities, as defined herein, within the public streets, rights-of-way, or on public property (“Right-of-Way”) within the City of Scottsbluff, Nebraska (“City”). The conditions of this Agreement are as follows:

1. “Third-Party Facilities” means equipment and other transmission apparatus necessary for the proper operation of a telecommunications system that is not owned by Grantee, but for which Grantee is responsible for the installation and maintenance of such equipment. Third Party Facilities may include, but is not limited to, canister-style antennas, panel-style antennas, Micro Remote Radio Unit radios (“MRRUs”) and Remote Radio Unit radios (“RRUs”). The Parties agree and understand that this list is not exhaustive and other antennas or radio units may be needed to provide service for the small cell network. In the event that other equipment is needed, the Parties will work together to either amend this Agreement and/or prepare other documentation that will allow for the inclusion of such equipment.
2. Any above ground installations of fiber optic cables and Third Party Facilities shall be mounted on existing poles through private agreement(s) with existing franchise holders. Grantee will not be allowed to erect any additional poles on Right-of-Way.
3. All underground cables must be installed using directional boring technology except where open excavations are necessary for beginning or terminating a directional bore.
4. Cables and Third Party Facilities shall be placed so as not to interfere with any existing utilities or facilities owned by the City or any other company legally authorized to own utilities or facilities located within City Rights-of-Way.
5. Grantee shall relocate cables and Third Party Facilities within one hundred twenty (120) days of receiving a written request from the City to do so. Any required relocation shall be completed at the sole expense of Grantee. City shall not unreasonably require Grantee to relocate its cables or Third Party Facilities.
6. If the City, in its sole discretion, determines that there is insufficient space available in any City Right-of-Way to accommodate an installation or relocation of Grantee’s cables and/or Third Party Facilities, Grantee shall reroute its cables and/or Third Party Facilities via City Right-of-Way where sufficient space is available.
7. All backfilling and surface restoration following any necessary open excavations shall be accomplished by Grantee in accordance with City engineering department requirements in effect at the time of the excavation. Grantee shall, at its expense, replace and restore all Rights-of-Way to a condition substantially similar to the condition of the Right-of-Way existing immediately prior to the commencement of work and in accordance with the City’s Planning and Development Department requirements, which shall be enforced on a competitively neutral

basis. In the case of any disturbance of pavement, sidewalks, driveways, lawns, or any other surface within the Right-of-Way, Grantee shall, at its expense, promptly replace, restore, and maintain same to the same condition.

8. Before the commencement of operations, Grantee shall procure and maintain public liability insurance in the amount of at least \$1,000,000, naming the City as an additional insured. Grantee shall maintain such insurance with insurance companies authorized to do business in the State of Nebraska. All policies shall name City, its employees, agents, and officers as additional insureds. Any such policy shall provide that it may not be cancelled or the amount of coverage altered without thirty (30) days written notice to the City Clerk. Similar coverage shall be provided for any contractors or subcontractors of Grantee.

9. All work shall conform to all applicable safety, construction, and technical specifications and codes and standards as well as all federal, state, county, and city construction requirements.

10. Grantee shall participate in and use Nebraska One Call in advance of the commencement of work.

11. Grantee shall not be entitled to damages from City resulting from the closing, vacation, or relocation of any streets, alleys, or right-of-way.

12. City shall have the right to inspect or correct all construction and installation work in order to ensure compliance with the terms of this Agreement, City Code, or Nebraska law.

13. Grantee shall not be relieved of any of its obligations by reason of City's failure to enforce prompt compliance.

14. Grantee agrees to indemnify, protect, and hold harmless City from and against any and all liability claims, losses, costs of investigation and defense, and damage to property or bodily injury or death to any person, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance, or operation of Grantee's fiber optic system or Third Party Facilities caused by any negligent act or negligent failure to act on the part of the Grantee, its agents, contractors, subcontractors, officers, or employees.

15. Permission is hereby granted to Grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with Grantee's wires, cables, and/or Third Party Facilities. All such trimming will be completed, only after Grantee has received permission from the owners of such trees and will be performed under the supervision and direction of any City official to whom such duties have been or may be delegated.

16. This Agreement and all rights hereunder may be assigned by Grantee, as well as all succeeding Grantees, at their option, and the successors and/or assigns shall succeed to all the rights, duties, and liabilities of the Grantee hereunder. Grantee shall give the City written notice of any assignment of this Agreement and the rights granted hereunder no less than sixty (60)

days prior to the effective date of any such assignment or such assignment shall be void and of no legal effect.

17. Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

18. This Agreement shall continue for a term of twenty (20) years and for successive five (5) year terms unless written notice is given by either the City or the Grantee to the other one hundred twenty (120) days or more prior to the expiration of the initial term or any successive term of its intention to terminate the same at the expiration of the then current term. In addition, this Agreement may be terminated by either party if the other party fails to remedy any default or breach of the terms of this Agreement following a ninety (90) day written notice of such default or breach. Upon termination of this Agreement, Grantee agrees, at its sole expense, to remove its equipment and Third-Party Facilities from the City's right-of-way within one hundred twenty (120) days of the termination of this Agreement and to restore the right-of-way to a condition substantially similar to the condition of the right-of-way existing immediately prior to termination.

CITY OF SCOTTSBLUFF, NEBRASKA

UNITE PRIVATE NETWORKS, LLC
Grantee

By: _____

By: _____

Its: _____

Its: _____