

RESOLUTION NO. 18-56

A RESOLUTION AUTHORIZING THE CITY MANAGER OF THE CITY OF GLADSTONE, MISSOURI, TO EXECUTE A RIGHT-OF-WAY USE AGREEMENT BY AND BETWEEN THE CITY OF GLADSTONE AND UNITE PRIVATE NETWORKS, LLC.

WHEREAS, Unite Private Networks, LLC (the "Licensee"), desires to use certain public right-of-way of the City for the purpose of construction, operation and maintenance of a fiber-optic telecommunication system pursuant to the provision of the laws of the State of Missouri; and

WHEREAS, the City Council of the City of Gladstone believes it is in the best interest and welfare of the citizens of Gladstone to enter into an agreement allowing the Licensee to use the property for such purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

THAT, the City Manager is hereby authorized to execute the Right-of-Way Use Agreement attached hereto as Exhibit "A" by and between the City of Gladstone, Missouri, and Unite Private Networks, LLC.

INTRODUCED, PASSED, SIGNED, AND MADE EFFECTIVE BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, ON THIS 10TH DAY OF SEPTEMBER, 2018.



Mayor Bill Garnos

ATTEST:



Ruth E. Bocchino, City Clerk



Request for Council Action

RES # R-18-56

BILL # City Clerk Only

ORD # City Clerk Only

Date: 9/10/2018

Department: General Administration

Meeting Date Requested: 9/10/2018

Public Hearing: Yes Date: [Click here to enter a date.](#)

Subject: Rights-of-Way Use Agreement for Communications Facilities between the City of Gladstone, Missouri and Unite Private Networks, LLC

Background: Unite Private Networks, LLC (the "Licensee"), has requested access to the City's rights-of-way for the construction of a fiber optic network within the City's corporate boundaries. As the Council will recall, the City's Rights-of-Way Management Ordinance was recently updated to require entities such as the Licensee to obtain Rights-of-Way Use Agreements prior to construction or placement of Licensee facilities in the City's rights-of-way.

Budget Discussion: Funds are budgeted in the amount of \$ from the Fund. Ongoing costs are estimated to be \$ annually. Previous years' funding was \$

Public/Board/Staff Input: The Rights-of-Way Use Agreement before the Council is the form Rights-of-Way Use Agreement provided to the Licensee by the City with only minor changes made to meet the Licensee's unique circumstances.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Chris Williams
Department Director/Administrator

PC
City Attorney

SW
City Manager

RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES

THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES ("Agreement") is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, Unite Private Networks, a Delaware limited liability company (the "Licensee"), and the City of Gladstone, Missouri, a municipality of the State of Missouri (the "City"). Licensee and City may sometimes be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

WHEREAS, Licensee has requested consent from the City to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

WHEREAS, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined below in 1.2); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Agreement, the capitalized terms shall have the meanings as set forth in the Code of Ordinances of the City, including specifically Chapter 115, and as may be amended (the "Code" or "ROW Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **"Communications"** The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **"Communications Service"** The transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Service," as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, Facilities, apparatus

(Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical facilities, which if proposed must be expressly separately requested below. **Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state, and local law and shall have on file with the City such authorization to provide such services prior to commencement.**

1.3 Agreement Subject to Provisions of ROW Code. This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a material of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City as a ROW-user, and to be subject to the enforcement by the City as provided therein and in this Agreement. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Agreements Non-Exclusive. This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from applying for and obtaining all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc. before installation of its Facilities within the Rights-of-Way.

2.2 Nature of Rights Granted by this Agreement. This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the right to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access, pole attachment agreements, or other attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

2.3 Grant. Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth in Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, over, under, or along the City's Rights-of-Way for the purposes of supplying Communications Service within the City, subject, however, to the terms and conditions

herein set forth within this Agreement and the ROW Code and all such special conditions as may be set forth in Exhibit A. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. The size, location and specifications of the underground Facilities and any future above-ground Facilities not authorized as provided in Exhibit A, are subject to prior City approval and consent. **Licensee shall not have the right to install wireless antennae or antennae support structures in the Rights-of-Way, nor provide services not authorized herein, without express separate written agreement and authorization of the City.** In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate. The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by specific a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral, non-discriminatory, and reasonable manner.

2.5 No Interference. Licensee shall construct and maintain its Facilities to be so located, constructed, and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

2.6 Notification, Joint Installation, and Collocation Requirements. Except in the case of an emergency, Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such written policy or direction as may be established by the City. All new facilities or structures shall collocate on existing poles or within existing conduit, trenches or other existing facilities unless shown to be not feasible. New poles or other new above ground structures more than 36" in height shall be prohibited except where a verified statement is provided documenting the specific circumstances upon which the City thereafter

determines that good cause requiring approval in the public interest or upon which such facility is required to be permitted by superseding law. Licensee shall further make its installed Facilities available to other Licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

2.7 Licensee Responsible for Costs. The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized and the City's books and records related to these costs shall be invoiced to Licensee within 30 business days. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way for City purposes. The Licensee shall be subject to pay the City reasonable compensation for use of the Rights-of-Way where such a fee is not contrary to applicable law and where established by the Board of Aldermen.

SECTION 3. TERM AND COMPENSATION

3.1 Term. This Agreement shall be effective for a term of ten (10) years from the Effective Date, subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

SECTION 4. TAXES

4.1 Taxes. The Licensee agrees to pay all applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a material breach of this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise, subject to any limitations herein and of applicable state or federal law.

SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

5.1 Transfer of Agreement. Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee

shall not change its name under which it does business with the public without providing at least thirty (30) days prior written notice to the City.

5.2 Agreement Binding. In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

5.3 Sale or Lease of Facilities. Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE

6.1 Forfeiture. In case of failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the Code, or if Licensee shall lose authority to provide its Communication Service or do business within the City under applicable law, the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, the City shall take action by an affirmative vote of the Board of Aldermen at the meeting and voting, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code or as may otherwise exist at law. All remedies described in this Section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

SECTION 7. GENERAL CONDITIONS

7.1 Compliance with Laws. In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances,

zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

7.2 Insurance. Except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$2,762,789.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Clerk. A copy of the insurance policy shall be made available to the City upon request. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City. The insurance requirements in this Section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo., has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.

7.3 Construction Guarantee and Maintenance. Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction performance. Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted. Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the Rights-of-Way, equipment within the Rights-of-Way or otherwise by Licensee's use of the Rights-of-Way.

7.4 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees. The City shall have the right, in its discretion, to audit the books and records of Licensee to determine if Licensee has properly accounted to the City the amount due to the City under the Licensee's obligation to pay taxes herein.

7.5 Relationship of the Parties. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

7.6 Relocation or Removal of Facilities.

7.6.1 In addition to the requirements of the ROW Code, the City may in its exercise of the public interest request, require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of its Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages.

7.6.2 Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, or relocate its Facilities as may be reasonably necessary for such permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least fourteen (14) days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within seven (7) days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages.

7.7 No Cause of Action Against the City. The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of the City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement, and agrees and

acknowledges this Agreement to be a lawful and valid agreement between the City and Licensee. Nothing herein shall be deemed to waive the City's sovereign immunity.

SECTION 8. INDEMNIFICATION

8.1 Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, councils, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification paragraph or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent (1.5%) interest per month until paid.

SECTION 9. NOTICE

9.1 Notice. Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:
Unite Private Networks, LLC
ATTN: Charlene White
VP of Real Estate
7200 NW 86th Street, Suite M
Kansas City, MO 64153

If Notice to City:

City of Gladstone
Attn: City Manager
7010 N. Holmes Street
Gladstone, MO 64118

9.2 Notice Receipt. If Notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if Notice is given by certified mail or the confirmation of delivery form if Notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for Notice by giving Notice of address change to the other Party in the manner for giving Notice prescribed in Section 9.1.

SECTION 10. MISCELLANEOUS

10.1 This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

10.2 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

10.3 No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

10.4 The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

10.5 This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

SECTION 11. EFFECTIVE DATE AND ACCEPTANCE

11.1 This Agreement shall be effective on the date this Agreement is last signed by both Parties ("Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF GLADSTONE, MISSOURI

[Signature]
MAYOR

UNITE PRIVATE NETWORKS, LLC

By: [Signature]

Name: Matt Wittanger

Title: General Counsel

ATTEST:

[Signature]
City Clerk

STATE OF Missouri)

COUNTY OF Clay) ss.

The forgoing instrument was acknowledged before me this 11th November, 2019,
by Bill Gurno on behalf of the City of Gladstone This person is
personally known to me or has produced _____ as identification.

[Signature]
(Signature of Notary taking Acknowledgment)

Notary Public, State of Missouri

My Commission Expires: _____

RUTH E. BOCCHINO
Notary Public - Notary Seal
STATE OF MISSOURI
Clay County
My Commission Expires: June 6, 2023
Commission #15422361

EXHIBIT A

SPECIAL CONDITIONS

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement:

1. All new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City.
2. Licensee acknowledges and agrees that it is required to pay all applicable taxes, including the City's license tax as a ROW-user asserting its status as a provider of local telecommunications services and shall remit to the City such tax on gross receipts of all of its revenue from its services authorized herein or otherwise as required by Article 5 of Chapter 105 of the City's Code of Ordinances, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.
3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf that are identified on the right-of-way permit application or otherwise identified to the City) shall not authorize third-parties without a valid license, Right-of-way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.

**CITY OF GLADSTONE
RIGHTS-OF-WAY USE AGREEMENT
APPLICATION FORM**

This Application is for a Rights-of-Way Agreement in the **City of Gladstone** for the construction, maintenance and use of the City's rights-of-way pursuant to Section 6.115.200 of the City Code. Consistent with state and federal law, the City has adopted Ordinances related to the management, coordination, and use of the rights-of-way to provide telecommunications, cable, utilities and other services. This Application requires payment of an **Application deposit fee of \$2500.00**, which ROW Application fee shall be utilized to at least partly offset the City's costs in this process, consistent with applicable law; any amount not used by the City for its actual costs will be refunded to the Applicant on request after execution of a Rights-of-Way Agreement. If applicable, the Applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation and adoption of a Rights-of-Way Agreement that may reasonably exceed the Application fee amount. The Application will be used to determine the qualifications and eligibility of the Applicant to be granted a Right-of-Way Agreement under the City Code, federal, state and local law, to assist the City in ensuring compliance of the Applicant with applicable law, and adapting any agreement to unique or special circumstances as may apply to or be established by the Applicant.

For the purposes of this Application Form, the term "Communications Service" means the transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any telecommunications service, enhanced service, information service, or internet service, as such terms are now, or may in the future be, defined hereunder or under federal law, and including all instrumentalities, facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical facilities, which if proposed must be expressly separately requested below. **Any party seeking to provide cable television, video services, or use wireless communication facilities shall also so provide in this Application as these are subject to additional and separate requirements and/or approvals of federal, state, and local law thereby applicable and subject to verification in this Application.**

It is recognized that any application may not fully describe or coincide with all types of utility uses, Communications Services or facilities that an applicant may propose particularly given the numerous potentially applicable regulatory schemes that may apply to the City's authority and the application depending on the nature of the specific applicant, use, and services applicant proposes to offer. If it is believed that certain questions are either not relevant or are inapplicable as a result of system design, law, or other reason, please indicate the basis for such belief as to your particular application. All applicants are also asked to provide any additional information that it believes to be useful to the City in processing this application and granting a use agreement.

Nothing in this Application shall be deemed to provide any entitlement to use the rights-of-way. Rather such use shall only be authorized after a fully executed separate Rights-of-Way Use Agreement has been approved by the City, specific rights-of-way permits for excavation or activity are issued, and all other applicable requirements as may be amended from time to time have been satisfied and maintained.

PART A: GENERAL INFORMATION

1. Name of Applicant, Including All Affiliates of the Applicant:

Applicant: Unite Private Networks, LLC Date: 8/10/2018

Affiliates:

2. Address of Applicant: 7200 NW 86th Street, Suite M
Kansas City, MO 64153

3. Name, Telephone Number, and **email** address of Contact Person for Applicant:

Charlene White
VP of Real Estate
(816)897-2228
Charlene.White@upnfiber.com

ATTACH COPY OF APPLICANT'S DRIVER'S LICENSE OR OTHER QUALIFYING IDENTIFICATION required by § 208.009 RSMo. For entities, attach identification of the authorized agent of entity.

4. This is an Application for (check all that apply and explain):

a. An initial license to construct, operate and/or maintain ducts, conduits, dark fiber or other facilities in the City's rights-of-way for the purpose of (check applicable):

(1) Communications Services (list services) Lit fiber

(2) _____ Utility services (list services) _____

(3) _____ Other (list services) _____

b. _____ Transfer of Agreement [attach Agreement to be transferred]

c. _____ Other, describe: _____

5. Please provide, if any, any specific proposed terms, provisions, or requested accommodations, including a proposed duration and any scheduling constraints of the Applicant.

UPN must complete the installation by 9/4/2018 for North Kansas City Hospital.

6. Does the Applicant have Public Service Commission authority to provide any services within the City? Yes **If so, please attach a copy of all applicable Commission Orders and tariffs applicable within the City.**

7. Does Applicant have a current business license with the City?

Business License Application and payment submitted to City on 7/31/2018

8. Did you have a prior franchise or agreement with the City? No **If so, please attach a copy.**

9. Is any wireless (RF) communication broadcasting equipment proposed to be located within the ROW? (if yes, provide detail descriptions, including dimensions).
Not at this time.

10. Provide proposed compensation to City for use of the rights-of-way (compensation may depend on type of use, location, and facilities, if any, used):

Pursuant to Missouri Code 67.1840, UPN will compensate the city based on the actual costs reasonably incurred for the management of the public right-of-way.

PART B: DESCRIPTION OF PROPOSED CONSTRUCTION PLANS, THE SYSTEM AND SERVICES

1. **Facilities.** Describe in Detail (information may be included partly or wholly on an electronic map):

- a. The geographic area within the **City** in which the Applicant proposes to construct or maintain its facilities and/or offer Communications Service and a schedule for any expansion/buildout.
Please see attached engineering plans.

- b. Type(s) of facilities to be installed, constructed or utilized (e.g., reinforced conduit, duct banks, fiber, co-axial cable, copper twisted pair, wireless radio transceivers or other wireless equipment) and the proposed location within the public rights-of-way or other locations where such facilities will be placed.

One 2.00" HDPE conduit, fiber optic cable and seven 24" x 36" x 36" handholes.

- c. To the extent known, the location of all facilities, including the use of existing overhead and underground public utility, conduit, communications cable, water, sewer drainage, poles, light stands and other facilities, in the public rights-of-way along the proposed route, or other locations.

- (1) If the facilities are to be installed overhead, identify the space available for locating Communications facilities on existing utility poles or City facilities along the proposed route (identify pole owner and locations).

- (2) If the facilities are to be installed underground in existing ducts or conduits, identify:

- (i) The available capacity in such ducts or conduits before installation of Applicant's facilities. N/A

- (ii) The capacity that will remain after the Applicant's facilities are installed. N/A

- (iii) The number and location of additional manholes or handholes required. N/A

- (3) If Applicant is proposing to install new ducts or conduits underground in the public rights-of-way, identify:

- (i) The proposed location(s).

Conduit will be installed along NE 61 Street, North Oak Trafficway and NE Englewood Road.

- (ii) The excess capacity that will exist after installation. Unknown at this time
- (iii) The number, size and location of vaults, manholes and handholes required. Seven 24" x 36" x 36" handholes.
- (iv) Other equipment and facilities to be installed. N/A
- (v) The type or design of conduit (provide specification or diagram if available) and method of installation.
2" HDPE conduit

- d. If known, the specific trees, structures, improvements, facilities, and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate.
None at this time
- e. Provide a scaled map of the proposed service area visually indicating the same information.
See attached map.

2. **Services.** Assuming that the Applicant obtains permission to use the public rights-of-way for the construction proposed by the Applicant, describe the types of facilities and/or services that the Applicant plans to provide upon approval of a separate Rights-of-Way Agreement for use of the rights-of-way for providing services. This information is necessary for the City to determine applicable fees or regulatory requirements.

- a. Does the Applicant plan to offer telephone service of any kind to **City** residents? If yes, describe type of service (i.e. switched local, VOIP, other technology or type)?
No.
- b. Does the Applicant plan to offer any type of video service to its customers, including cable television, open video system service, or video services? No.
- c. Does the Applicant intend to lease or sell dark fiber on its system to other entities? Yes.
- d. Does the Applicant intend to lease or sell transmission capacity on its system to other entities? Yes.
- e. Does Applicant intend to lease or sell space in ducts, on poles or in conduits for use by other entities? Not at this time.
- f. Does Applicant intend to lease or sell Internet access services, enhanced information services, security services, energy-related services or any other Communications Services not previously listed in this section? Yes - Internet access services.
- g. If any of the questions in this paragraph 2 were answered "yes," please describe in detail to whom, how, and when such services or facilities will be offered **and provide the specific state or local franchise or authority to provide such service in the City.** Please note separate facilities owned by another but utilizing Applicant's facilities, including conduits, are subject to the Application requirements and fees imposed by the City. This project is to provide services to North Kansas City Hospital at 6080 North Oak Trafficway in Gladstone, MO.

Attachments included: Yes (yes/no and list)
Engineering plans, CLEC documentation

3. Please provide a schedule and completion dates for development and construction of the Applicant's proposed facilities, Communications System or Open Video System.
We wish to start construction ASAP. Installation should take 2 weeks or less to complete.

4. Please describe the Applicant's proposed maintenance plan.
a. If leasing access to ducts, poles or conduits to or from third-party Communications Service providers, please explain the installation and maintenance procedures for such third-party Communications facilities. Please identify the third-parties and provide lease terms/arrangements.

UPN is responsible for maintaining its equipment placed in the City's right of way.

5. If the Applicant proposes to provide any Communications Service, has it obtained all required federal, state and local permits, licenses, certificates and franchises and met all other legal requirements? If yes, please attach all relevant documentation (i.e. PSC certificate, etc.).
Yes

6. Will the Applicant have a local office in the City? If so, how many employees will it office? In what capacity will the employees serve? Will such employees perform construction and maintenance on the system? Will such employees serve as a local contact for the City regarding the agreement?
No.

7. Provide a detailed estimate of construction costs for the Initial System with respect to the use of the City's rights-of-way, including excavation and right-of-way restoration, or if this Application relates to a request to expand the type, scope, or geographical location of services, a detailed estimate of the right-of-way construction costs of such expansion. This information will be subject to independent verification by the City.

Unite will agree to meet all restoration requirements of the City and Unite agrees that if it fails to restore any right of way to a condition substantially similar to the pre-construction condition for a period of greater than 30 days after the City provides notice to Unite, Unite will reimburse the City for all reasonable costs to restore the right of way.

PART C: LEGAL BACKGROUND OF APPLICANT

1. Has the Applicant ever been engaged in any litigation with a municipality with respect to the use of rights-of-way? If so, please describe the nature of the dispute, the municipalities involved, the amount of damages, if any, paid by either party and whether the dispute has been finally resolved.
No.

2. List any parent companies, subsidiaries, or other entities which a controlling equity interest in the Application or in which Applicant owns a controlling equity interest.

Cox Communications - Parent Company
Ridgmont Equity Partners - Parent Company

3. Is the Applicant currently involved in any disputes before any federal, state, or local regulatory agency that questions or could reasonably impact the ability of the Applicant to legally construct, maintain or provide facilities or services in the City? If so, please describe.
No.

PART D: FINANCIAL BACKGROUND OF APPLICANT

1. What will the cost be for the construction in the rights-of-way of the proposed facilities or services in next 24 months?
\$80,000.00

2. Please submit a copy of proposed insurance meeting City Code requirements and any proposal for a security adequate to protect the City's interest in ensuring that all construction and related right of way costs for the proposed facilities or services are covered. If Applicant claims any lawful exemption to either insurance or bonding requirements of the Code, please provide detailed basis and supporting documentation for each such exemption.
Attached.

3. Has the Applicant ever been placed in a receivership, declared bankruptcy, been declared insolvent, or had property foreclosed upon by a creditor? If so, please explain in detail the circumstances behind each instance.
No.

I certify that I am authorized to execute this Application and any subsequent Agreement on behalf of the Applicant. I further understand that if there are material omissions of information requested by this Application or deliberately false answers given to questions on this Application, the City may revoke any Rights-of-Way Agreement, permit, or license it has granted based on this Application. Further, such actions shall be punished as provided pursuant to City Code or other applicable law.

Dated: 8/13/2018

By: *Charlene C. White*
Charlene White, VP of Real Estate

Barbl Littrell
Notary Public

