

RESOLUTION NO. 2021-2

**A RESOLUTION OF THE CITY OF GOTHENBURG, DAWSON COUNTY, NEBRASKA,
APPROVING THE JOINT USE OF ALL CITY-OWNED UTILITY POLES**


WHEREAS, USCOC Nebraska/Kansas, LLC is the telecommunications company that wishes to attach small cell antennas and accessories to City owned utility poles; and

WHEREAS, the National Electric Safety Code prescribes methods and clearances required for installation of multiple wire strand utility company facilities and equipment on utility poles; and

WHEREAS, the proposed Pole Attachment License Agreement requires USCOC Nebraska/Kansas, LLC to pay the per pole annual fee as determined by the current Fee Schedule for the City of Gothenburg that is received from other companies that utilize this service.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOTHENBURG, NEBRASKA, that the Mayor is hereby authorized to, on behalf of the City, to execute the Pole Attachment License Agreement between the City of Gothenburg and USCOC Nebraska/Kansas, LLC.

PASSED AND ADOPTED this 16th day of March, 2021.



Joyce Hudson, Mayor

Attest: 

Misty Bussinger, City Clerk

APPROVED AS TO FORM:



Mike Bacon, City Attorney

This MASTER LICENSE AGREEMENT ("Agreement") is made as of the date of the last signature below ("Effective Date"), is made by and between the City of Gothenburg, Nebraska ("Licensor") and USCOC Nebraska/Kansas, LLC, a Delaware limited liability company ("Licensee"), with its principal offices located at 8410 West Bryn Mawr Avenue, Chicago, Illinois 60631. Licensor and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

RECITALS

WHEREAS, Licensor is the owner, of certain streetlight poles, utility poles, traffic signal poles ("Licensor Poles") and/or property within the right-of-way, which is owned and/or managed by Licensor; and

WHEREAS Licensee is duly authorized and licensed by the Federal Communications Commission to provide wireless services within Gothenburg's territorial boundaries; and

WHEREAS, Licensee desires to access the right-of-way to construct Licensee owned or operated new wireless support structures ("Licensee Poles") used to support Small Cell Wireless Facilities, and install, own, lease, and/or operate Small Cell Wireless Facilities on or supported by Licensor's Poles and third-party owned utility and/or streetlight poles within the right-of-way; and

WHEREAS, for the purposes of this agreement, Small Cell Wireless Facilities ("Facilities" or "Facility") is defined as equipment and a communications network which includes all of the following: (a) pole-mounted and ground-mounted equipment associated with wireless service; (b) radio transceivers, antennas, or coaxial, metallic, or fiber-optic cable located on, in, under, or otherwise adjacent to a Pole; (c) regular and backup power supplies; (d) wireless equipment housed within an associated wireless or slab-mounted equipment cabinet; and

WHEREAS, Licensor and Licensee acknowledge that the terms of this Agreement are nondiscriminatory, competitively neutral and commercially reasonable; and

WHEREAS, Licensor and Licensee desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular locations at which Licensor may wish to permit Licensee to install; maintain and operate Facilities as hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

AGREEMENT

THE PARTIES AGREE as follows:

I. Premises

Pursuant to all terms and conditions of this Agreement, Licensor agrees to license to Licensee certain space on or upon the right-of-way and Licensor's Poles (collectively, "Premises") for the installation, operation, modification, maintenance and repair of Licensee Facilities and Poles; together with the non-exclusive right of ingress and egress from the right-of way; seven (7) days a week, twenty four (24.) hours a day for the purpose of installation, operation, maintenance, repair and modification of Licensee's Facilities. In the event there are not sufficient electric, and telephone, cable or fiber utility sources located at the specific location agreed upon, Licensee shall request approval from Licensor, by submitting to Licensor a detailed written plan for such installation. Licensee, shall, in its reasonable discretion, notify Licensor that it approves, denies, or modifies the plan within sixty (60) calendar days of receipt of the same, and in the case of denial or modification, Licensor shall state the reasons therefor. Licensee shall arrange and pay for any such approved installation.

II. Master License Term

The initial term of this Agreement ("Master Initial Term") shall be for five (5) years commencing upon the Effective Date and shall automatically renew for four (4) additional five (5) year periods (each a "Master Renewal Term") thereafter, unless Licensee notifies Licensor of its intent not to renew at least one hundred and twenty (120) days prior to the end of the then current Master Initial or Renewal Term.

III. Permit Application & Issuance Process

A. Permit Required.

- i. Licensee shall apply for a Small Cell Permit ("Permit") for the installation or placement of each Small Cell Wireless Facility. A Permit is not required for routine maintenance or repairs, emergency access, like-for- like replacement, but notice may be required as set out in Section XIX.
- ii. It is understood that Licensee may apply for a Permit to collocate Facilities on existing utility poles, Licensor Poles and/or build new Licensee Poles or replace existing poles for the purpose of collocation of such facilities which would comply with all encroachment and building permits, applicable Licensor, state and federal specifications, and laws.

- iii. Licensee may, at Licensee's sole cost, replace existing poles or infrastructure if structural or engineering analysis deem that a pole replacement is necessary to support Licensee's Small Cell Wireless Facilities. Such installation shall be made only upon prior written approval of Licensor and subject to the reasonable terms and conditions set forth in such written approval. Upon installation of the replacement Pole, title to such Pole shall transfer to Licensor as is with no guarantee or warranty, express or implied, without the need for a bill of sale. Licensor shall thereafter be responsible for the maintenance and repair of such replacement Pole, along with the operation of any Licensor equipment attached and any corresponding costs:
- iv. Licensor shall secure a permit from Licensor to work within rights-of-way for activities that affect traffic patterns or require lane closures.

B. Review of Permit Application.

i. *Complete Application.*

Licensor shall review Licensee's Permit Application for completeness before reviewing the application on its merits.

- a. A complete Permit Application is an application that provides Licensor with all the information listed on the Permit Application (application form is attached as Exhibit "A" and all information necessary under this Agreement for Licensor to begin to examine the affected Poles.
- b. If Licensor submits an incomplete Permit Application, Licensor shall, within ten (10) business days, inform Licensee of that fact and provide a list of information that still needs to be provided. If the resubmitted Permit Application is still incomplete, Licensor shall; within five business days, inform the Licensee of that fact and provide a list information that still needs to be provided.

ii. *Issuance of Permit.*

- a. Upon receipt of a complete Permit Application, Licensor will review the Permit Application within forty-five (45) days and either approve or deny a Facility by issuing a Notice of Permit Approval or Denial Form for each Facility, as attached Exhibit "B".
- b. During such 45-day period, Licensor will discuss any issues with Licensee, including any unusual engineering or design

requirements associated with the Permit Application.

- c. If Licensor denies a Permit, it shall do so in writing and provide an explanation of the reasons the Permit was denied on the Notice of Permit Approval or Denial document, Exhibit "B".
- d. Each approved Permit shall have an initial term ("Permit Initial Term") of five (5) years commencing upon date of issuance or approval and shall automatically renew for two (2) additional five (5) year periods thereafter ("Permit Renewal Terms"), unless earlier terminated by Licensor by giving notice of non-renewal prior to the end of the then current Permit Initial or Renewal Term.
- e. Licensee may terminate individual Permits at any time for any reason upon written notice to Licensor. Upon termination of a specific site or location, Licensee shall remove equipment within one hundred and twenty (120) days of termination and restore the site to the condition it was in prior to the installation of the equipment. Licensee shall have no further obligations or liability with regard to the terminated site, for payment of recurring annual fees pertaining to the specific site.

C. Application Requirements.

For each Facility, Licensee shall submit an application to Licensor for permit that includes:

- i. Site specific structural analysis;
- ii. The location where each proposed Facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed Facility would be mounted or location where utility poles or structures would be installed;
- iii. Specifications and drawings for each proposed Facility covered by the application as it is proposed to be installed (such drawings shall be provided in paper and electronic version);
- iv. The equipment type and model numbers for the antennas and all other wireless equipment associated with the Facility.
- v. A proposed schedule for the installation and completion of each Facility covered by the application, if approved; and

- vi. The application fee due.

D. Application Fees.

Application fees are subject to the following requirements:

- i. Along with each application, Licensee shall submit a non-refundable application fee in the amount of Five Hundred Dollars (\$500.00) with an additional One Hundred Dollars (\$100.00) for each site beyond five (5) in a single application.
- ii. Licensee shall pay an application fee of One thousand Dollars (\$1,000.00) for each Facility addressed in an application for the installation of a Licensee Pole or wireless support structure.
- iii. Notwithstanding any contrary provision of any applicable Laws, applications pursuant to this Section must be accompanied by the required application fee.

IV. Removal, Relocation & Restoration

A. General Restrictions.

In the event Licensor, in its reasonable discretion deems it necessary to remove, relocate or replace a Licensor Pole due to public health and/or safety, Licensor shall notify Licensee at least one hundred eighty (180) days prior of the need to remove or relocate its Facility. In such event, Licensor shall provide options for alternative locations for Licensee relocation of equipment which shall be in a mutually agreeable location. Licensee shall be solely responsible for all costs related to the relocation of its Facility to the alternative location. In the event that a suitable alternative location cannot be identified Licensee may terminate the applicable permit upon notice. Provided, however, should Licensor deem that pole replacement is an emergency, it may undertake such reasonable immediate action as it determines and shall call the Licensee's Network Operations Center at (800) 510-6091 as soon as practicable.

B. Removal at End of Term.

Licensee shall, upon expiration of the Permit Initial or Renewal Term, or within one hundred and twenty (120) days after any earlier termination of a Permit, remove its equipment, conduits, fixtures and all personal property and restore the premises to its original condition, reasonable wear and tear and casualty damage not caused by Licensee excepted. Licensor agrees and acknowledges that all of the equipment,

conduits, fixtures and personal property of Licensee shall remain the personal property of Licensee and Licensee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws.

In the event of cessation or termination of Licensee's business operations or termination of the use of Licensee's Facilities, Licensor shall have the right to remove the Facilities from Licensor's poles and right of way after providing notice in writing to Licensee at the address shown below.

V. Temporary Power

Licensee shall be permitted at any time during the Master or Permit Term to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere within the right-of-way in such locations reasonably approved by the Licensor. Licensee shall be permitted to connect the temporary power source to its equipment on the Premises in areas and manner approved by Licensor.

VI. Interference

Licensee's operation of the Facilities shall not interfere with the frequencies used by a public safety agency for public safety communications. Licensee shall install Facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment. Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency. If a Facility causes such interference, and Licensee has been given written notice of the interference by the public safety agency, Licensee, at its own expense, shall take all steps necessary to correct and eliminate the interference, including, but not limited to, powering down the Facility and later powering up the Facility for intermittent testing, if necessary. The Licensor may terminate a Permit for a Facility based on such interference if Licensee is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

VII. Condition of Premises

Where the Premises includes one or more Licensor-owned poles, Licensor covenants that it will keep the poles in good repair as required by all federal, state, county and local laws. If the Licensor fails to make such repairs including maintenance within ninety (90) days, of any notification to Licensor, the Licensee shall have the right to cease

annual rental for the affected poles until affected poles are repaired to good repair. If Licensor fails to make repairs or necessary maintenance to affected poles, then Licensee may terminate specific permit for site and remove its facilities.

VIII. Annual Recurring Fees

An annual Permit fee of Two Hundred and Seventy Dollars (\$270.00) for each Small Cell Wireless Facility installed within the right-of-way shall be paid to the Licensor by Licensee. Pursuant to the terms of this Agreement, the Licensee shall pay the initial permit and license fee upon issuance of each Permit, prorated to December 31st of same year. Not later than January 1st of each succeeding year the Licensee shall pay pole rental to Licensor for that year. The Licensor shall send to Licensee (at the address specified in Section XIX) an invoice for such amount at least sixty (60) days before such amount becomes due. Failure to send an invoice within the specified time period shall in no way constitute a waiver of Licensee's obligation to make payments as specified herein.

IX. Default

A. In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations under it, the nonbreaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period, as may be required beyond the 30 days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues to cure to completion. The non-breaching Party may maintain any action or affect any remedies for default against the breaching Party subsequent to the 30-day cure period, as potentially extended based on circumstances.

In the event of a default without cure by either Party with respect to a material provision of this Agreement, the non-defaulting Party may terminate the Applicable Permit.

X. Damaged Poles and Facilities

If a Licensor Pole is damaged or downed for any reason, and as a result is not able to safely hold the Facilities, the Licensor will repair or replace Licensor's Pole within thirty (30) days of notice or knowledge of the damage. If Licensor becomes aware of damage to a Licensor Pole that supports Licensee's Facilities, Licensor shall notify Licensee's Network Operations Center at (800) 510-6091 as soon as practicable. The parties will use reasonable efforts to coordinate any necessary responses. In the event of any damage to a Licensor Pole that impacts Licensee's use of the Licensor Pole, Licensee may, with Licensor's prior approval, which shall not be unreasonably withheld, repair or replace the Licensor Pole with a like-kind Licensor Pole at Licensee's own expense, less the reasonable costs of labor and materials, including pole cost. Licensee may reinstall its Facilities after a damaged Licensor Pole has been repaired or replaced. Licensee may temporarily use an

alternative location reasonably acceptable to the Parties during repair or restoration of a Licensor Pole. Licensee acknowledges and agrees that Licensee, subject to Section XII, bears all costs for relocation or replacement of its Facilities and Licensee's poles, and materials installed in the right-of-way or on Licensor's Poles pursuant to this Agreement.

XI. Insurance

The Licensee shall carry and maintain, at its own cost and expense, the following insurance: Commercial Workers' Compensation Insurance as required by law, Commercial General Liability Insurance with a minimum combined single limit of Five Million Dollars (\$5,000,000) covering personal injury and property damage, completed operations, independent Licensees and contractual liability (which may be provided in any combination of primary and excess coverage); Employer's Liability Insurance with a minimum combined single limit of One Million Dollars (\$1,000,000); and Commercial Automobile Liability Insurance for any motor vehicle covering bodily injury and property damage with a minimum combined single limit of Two Million Dollars (\$2,000,000). Licensee shall provide annual proof of such insurance to Licensor. At the commencement of each Master Recurrent Term, the minimum coverage amount set forth herein may increase by 10% over the previous coverage amount.

XII. Indemnification

Licensee shall defend, indemnify and hold the Licensor harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the Licensee, its employees, contractors or agents, except to the extent such claims or damages may be due to, or caused by, the negligence or willful misconduct of the Licensor, or its employees, contractors. The Licensor shall provide the indemnifying Party with prompt, written notice of any written claim covered by this indemnification or agents.

XIII. Limitation of Liability

The Licensor shall not be liable to the Licensee, in any event for consequential, indirect, special, or punitive damages including, but not limited to lost revenue, loss of equipment, interruption or loss of service, or loss of data.

XIV. RESERVED.

XV. Assignment

Neither Party will have the right to assign or transfer its rights or obligations pursuant to this Agreement without the prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, of the other Party, except that Licensee may assign or transfer this Agreement: (a) to a successor as a result of a merger, consolidation, acquisition, reorganization, or sale of all or substantially all of Licensee's assets; or (b) to an affiliate of Licensee. The terms and conditions of this Agreement will

inure to the benefit of, and will be binding upon, each Party's successors and permitted assigns.

XVI. Entire Agreement

This Agreement and each Permit constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements related thereto. There are no representations or understandings of any kind related thereto not set forth herein. Both Parties acknowledge and agree that neither has relied on any estimates of the potential number of Facilities that may be licensed or potential rental amounts under this Agreement as an inducement to enter into this Agreement and that any such estimates shall not constitute a representation or warranty. Any amendments to this Agreement must be in writing and executed by both parties.

XVII. Force Majeure

The obligations hereunder of a Party will be suspended while and to the extent that such Party is prevented from complying herewith in whole or in part by any event beyond the reasonable control of such party, which for purposes of this Agreement will include acts of God, earthquakes, unavoidable accidents, laws, rules, regulations, or orders of government authorities (including travel advisories, warnings or bans by a federal or international health agencies,) acts of war (declared or not), terrorism, hostilities war (declared or not) terrorism, hostilities, blockades, civil disturbances, disease outbreaks, epidemics and quarantines, embargoes, or any other similar event or cause that could not reasonably be avoided by such party, including by maintenance of reasonable disaster recovery measures.

XVIII. Compliance with Laws

Each Party shall comply with all applicable federal, state and local laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, (collectively "Laws").

XIX. Notices

Notices permitted or required under this Agreement related to the following matters, must be in writing and delivered by personal delivery, by certified mail or by overnight carrier mail, return receipt requested to the parties at the addresses below set forth: (a) notices of default; (b) notices intended to amend this Agreement; and (c) notices of termination. All other notices may also be delivered by electronic mail and will be deemed given upon personal electronic reply acknowledging receipt.

LICENSOR:

Gary Greer
City Administrator
405 9th Street
Gothenburg, NE 69138

Copy to:

City Attorney
416 10th Street/PO Box 208
Gothenburg, NE 69138

LICENSEE:

USCOC Nebraska/Kansas, LLC
Attention: Real Estate Lease Administration 8
410 W. Bryn Mawr Avenue
Chicago, Illinois 60631

Copy to:

USCC Services, LLC
Attention: Real Estate Lease Administration
8410 W. Bryn Mawr Avenue
Chicago, Illinois 60631

Any Party hereto may, by giving five (5) days written notice to other in the manner herein stated, designate any other address in substitution of the address shown above which notices shall be given.

XIX. Severability

If any of the provisions contained in the Agreement are for any reason held to be invalid, illegal, or unenforceable, the remaining provision of this Agreement will be enforceable to the maximum extent possible.

XX. Electronic Signature

This Agreement may be executed using facsimile, scanned email, or electronic signatures and each facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version.


[END OF AGREEMENT – SIGNATURE PAGE TO FOLLOW]

SIGNATURE PAGE TO
MASTER LICENSE AGREEMENT

IN WITNESS WHEREOF, the duly authorized representatives of the Parties hereto have executed this Agreement as of the dates below.

LICENSOR: City of Gothenburg, NE

LICENSEE: USCOC Nebraska/Kansas, LLC

Signature: 

Signature: Michelle Rowland

Name: Gary D. Greer

Name: Michelle Rowland

Title: CITY administrator

Title: Category Manager - Small Cells

Date: 3/17/21

Date: 3-12-2021

Exhibit A

SMALL CELL WIRELESS FACILITIES PERMIT APPLICATION

APPLICANT INFORMATION

Applicant Name:		Date:
Applicant is a: <input type="checkbox"/> Carrier/Wireless Provider <input type="checkbox"/> Representative <input type="checkbox"/> Other:		
Company Name:		
Address:		
City:	State:	ZIP Code:
Phone:	Email:	

PROPOSED SITE LOCATION

Site Name(s) & Number(s):		
Latitude / Longitude:		
Appx Property Address:		
City:	State:	ZIP Code:
Closest Intersection (Distance and Direction from):		

EXISTING POLE/STRUCTURE INFORMATION

New Pole/Structure Construction? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Pole/Structure ID Number:	Height of Pole/Structure (feet):	Pole Type & Color:
Existing Attachment(s) on Pole/Structure? (<i>e.g.</i> , banners, light fixtures) Yes <input type="checkbox"/> No <input type="checkbox"/>		
Existing Structure Owner:		
Name of Structure Owner Representative:		
Address:		
City:	State:	ZIP Code:
Phone:	E-mail:	Fax:

PROPERTY OWNER INFORMATION

In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider shall provide competent evidence of the consent of the owner of such pole to the proposed collocation. Permission has been granted by property owner? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Name:		
Address:		
City:	State:	ZIP Code:
Phone:	Email:	

APPLICATION REQUIREMENTS

The following documents must be attached or included for the Application to be complete:

- Application fee(s)
- Site specific structural analysis
- The location where each proposed small wireless facility or utility pole would be installed
- Photographs of the proposed site location and its immediate surroundings
- Specifications and drawings for each proposed small wireless facility
- The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility
- A proposed schedule for the installation and completion of each small wireless facility, if approved
- Proof of permission granted by property owner, if existing pole not owned by the City

ATTESTATION, ACKNOWLEDGMENT & SIGNATURE

I attest to the best of my knowledge and belief, that the information stated in this application and in all supporting plans and documents is true and accurate.

Signature of Applicant:

Date:

Printed Name of Applicant:

Title:

Exhibit A

****FOR ADMINISTRATIVE USE ONLY****

Date Application was submitted:

Site Name(s) & Number(s):

Application is: Complete Incomplete

If incomplete, date the Applicant was notified:

Missing documents or information: