



City Council Meeting Agenda

April 12, 2021

6:00 p.m.

Mayor: John McTaggart
Councilmember: Chuck Adams Carolyn Caiharr Garrett Mellott
Margaret Shriver Chuck Stites

This meeting will be held in person but masks and/or facial coverings will be required to attend in order to comply with Wyandotte County Health Orders

Please stand for the **Pledge of Allegiance**

1. Consider approval of consent agenda items
 - a. Approve minutes of March 22, 2021
 - b. Statement of Bills paid \$380,877.94
2. Requests or Comments from the public
(As a courtesy to your fellow citizens, please try to limit your comments to three minutes)
3. Consider motion to recess into Executive Session pursuant to K.S.A. 75-4319(b)(2) for consultation with legal counsel for matters which would be deemed privileged in the attorney-client relationship for discussions regarding a sewer development agreement as well as a development agreement related to a project in the City's industrial park
4. Hear City Manager presentation related to the American Recovery Act of 2021 and its potential impacts for the City of Edwardsville
5. Hear City Manager presentation regarding adjustments to the City's pay plan
6. Consider Ordinance No. 1041 granting a telecommunications franchise to Unite Private Networks LLC
7. City Manager Report
8. Council and Mayor Comments



City Council Meeting Minutes

March 22, 2021
6:00 p.m.

Mayor: John McTaggart
Councilmember Chuck Adams Carolyn Caiharr Garrett Mellott
Margaret Shriver Chuck Stites

This meeting was held using a hybrid of in-person and remote participants with Councilmembers Caiharr, Shriver, and Stites participating remotely.

1. **Consider approval of consent agenda items**
 - a) **Approve minutes of March 8, 2021**
 - b) **Statement of bills paid in the amount of \$933,037.20**
 - **Motion:** Councilmember Caiharr made the motion to approve the consent agenda items with an amendment to page 3 of the March 8 minutes regarding her comments on supervision of community service.
 - **Second:** Councilmember Shriver seconded the motion
 - **Vote:** Passes 5-0
2. **Requests or Comments from the public**
 - No public comments were heard or submitted.
3. **Consider recommendation of approval from the Cemetery, Parks and Public Spaces Board to authorize the City Manager to enter into a contract with Supreme Green Landworks for mowing services at the Edwardsville Cemetery**
 - Assistant City Manager Zack Daniel reviewed this item, noting that the low bid for the work was a company who is based out of Texas and Arizona and who intend on subcontracting the work.
 - The CPPS Board felt that was not in the best interest of the site and thus recommended Supreme Green Landworks for the contract citing their good references and familiarity with area cemeteries.
 - Mr. Daniel noted that, similar to previous contracts, this would be a one-year agreement with the option to extend for up to three years.
 - Mr. Daniel noted the estimated quantities of the mows as well as the possibility that contracted staff would mow the north section of the City Hall site if staff was otherwise assigned to different duties.
 - **Motion:** Councilmember Adams made the motion to authorize the City Manager to enter into a contract with Supreme Green for Cemetery mowing and other duties as needed.
 - **Second:** Councilmember Mellott seconded the motion
 - **Vote:** Passes, 5-0
4. **Consider Ordinance No. 1040 adopting contractor licensing**
 - City Manager Michael Webb reviewed this item and its history at the Planning Commission
 - Mr. Webb noted that this ordinance would establish the contractor licensing program originally formed by Johnson County. This licensing program has grown into a regional and national program. Many contractors who currently do work in the city

are licensed through this program, but the City does not currently ask for verification.

- Planning Commission Chair Mark Bishop also spoke in favor of the ordinance, noting it helps protect consumers by ensuring all contractors have met the minimum thresholds for insurance, training, and testing to practice in their specific field.
- Councilmember Caiharr stated she is not in favor of this ordinance because it may limit the options for property owners to hire who they want to hire for home contracting.
- Mr. Bishop noted that any electrician, for example, would need to have the proper licensing in place for certain work to be done whether this program was in place in Edwardsville or not, but that the program is a protective measure for all residents. It prevents non-reputable or underinsured groups from performing substandard work.
- Councilmember Caiharr again stated she was not in favor of the government imposing limits on consumer choice.
- Mr. Webb pointed out that most of the permits that come through the office are done by contractors, not homeowners, and many of them already have the appropriate licensure. This ordinance would bring Edwardsville in line with area communities regarding standards for the best interest of the public. This also
- Councilmember Stites clarified that this ordinance would not prevent homeowners from doing certain work themselves.
- Mr. Webb noted this ordinance would come at no cost to the City because Johnson County maintains all the records for their program.
- Assistant City Manager Zack Daniel pointed out that this also serves to protect renters, who may not have a choice in the contractors their landlords choose for work in their dwellings.
- **Motion:** Councilmember Mellott made the motion adopt Ordinance No. 1040
- **Second:** Councilmember Adams seconded the motion.
- **Vote:** Passes 4-1, with Councilmember Caiharr dissenting

5. Consider authorizing the City Manager to enter into a contract with Blue Moon Hauling, LLS for the Riverview Ave. & 102nd Street culvert installation project

- Public Works Director Dustin Zenger addressed this item, providing a summary of the bid process.
- Blue Moon Hauling was the low bidder on the project, coming in at \$40,349, out of the nine submissions received by City staff.
- Councilmember Adams asked why this and recent engineer's estimates seemed to come in low. BHC representative Randy Gorton noted that there are a number of variables which could affect final bids (cost of supplies when the project is reviewed, other projects groups have going on, etc.) but the tight grouping of responses indicated that the low bid would be accurate.
- There was additional discussion about future curbs and gutters as well as guardrails.
- Councilmember Stites asked about the start date and duration, which Mr. Zenger noted that the project should be able to start quickly, but there is no firm start date.
- **Motion:** Councilmember Adams made the motion to authorize the City Manager to enter into a contract with Blue Moon Hauling for this project
- **Second:** Councilmember Mellott seconded the motion
- **Vote:** Passes 5-0

6. **Consider Resolution 2021-03 authorizing the reimbursement of funds for preliminary and final design, right-of-way acquisition, and other related expenses for the 98th St. project from future bonds or other tax-exempt proceeds**
7. **Consider authorizing the City Manager to enter into a contract with BHC for preliminary and final design work for the 98th St. project**
 - City Manager Michael Webb addressed both items 6 and 7 at the same time as they are related to the same project.
 - Mr. Webb reviewed the STP process related to this project as well as the money set aside from previous bond issuances. Mr. Webb noted that this resolution would allow costs for these projects to be reimbursed by future debt that is issued.
 - Mr. Webb then reviewed the maximum amount set for the proposed BHC contract, which is \$1,000,000, though he expects final costs to be lower than that amount.
 - **Motion:** Councilmember Adams made the motion to adopt Resolution 20201-03
 - **Second:** Councilmember Stites seconded the motion
 - **Vote:** Passes 5-0
 - **Motion:** Councilmember Mellott made the motions to enter into a contract with BHC for design work for the 98th St. project
 - **Second:** Councilmember Shriver seconded the motion
 - **Vote:** Passes, 5-0
8. **Consider motion to recess into Executive Session pursuant to K.S.A. 75-4319(b)(2) for consultation with legal counsel for matters which would be deemed privileged in the attorney-client relationship in regards to a sewer development agreement**
 - **Motion:** Councilmember Adams made the motion to recess into executive session with the regular meeting to resume at 7:40.
 - **Second: Councilmember Mellott seconded the motion**
 - **Vote: Passes, 5-0**
 - Executive session began with legal counsel Scott Anderson. Mr. Daniel noted the procedure for the session for the people participating online.
 - **Motion:** Councilmember Adams made the motion to return to regular session
 - **Second:** Councilmember Mellott seconded the motion
 - **Vote:** Passes, 5-0
9. **Consider Resolution 2021-04 authorizing the Mayor to enter into a Sewer Development Agreement with Compass Commodity Group 300, LLC and Scannell Properties #516, LLC**
 - Bond counsel Scott Anderson reviewed the proposed sewer development agreement. This would require an expansion of the sewer system in the northern end of the City, which would include a City sewer improvement servicing property in Edwardsville in the future as well as the “site” sewer improvements, which is a force main which will service the future Bonner Springs development.
 - The agreement notes that Scannell will design and engineer the improvements at their cost while the City would agree to allow the improvements if Scannell pays for the construction costs.
 - The City would request a dedication of all permanent utility easements as well as the dedication of the right-of-way for the Village South Parkway extension.
 - A \$100,000 connection fee would be required, in addition to all other sewer charges.
 - Jake Kerth, representing Scannell Properties, addressed the Council noting they are excited for the Bonner Springs project which they believe will lead to more economic development in the entire area, including Edwardsville.

- Mr. Kerth noted Scannell is extremely bullish on the site and hope to move forward with construction on a project soon.
- There was additional discussion on the term of the agreement, which gives the developers one year to begin development or else the agreement will become null and void.
- In response to Councilmember Caiharr's question, Scott Anderson noted it was appropriate that a developer would seek to get this kind of agreement before getting a tenant for the development site.
- **Motion:** Councilmember Adams made the motion to adopt the sewer development as written with the amendment that the easements and rights-of-way be dedicated within 120 days of the contract's execution and adopt Resolution 2021-04 to that affect.
- **Second:** Councilmember Mellott seconded the motion.
- Councilmember Caiharr voiced her concerns about the Bonner Springs development, specifically the landscaping along 110th St. and Speaker Road. She asked if the developers had plans to improve the appearance of the area.
- Chip Corcoran, representing RIC, noted these items would be discussed and reviewed as part of the standard planning processes.
- Councilmember Stites asked for clarification about the timeline in the agreement, which could conceivably be as far as two years out before construction begins.
- There was additional context given for this timeline, considering the design, review, and approval stages still yet to come.
- There was discussion between Scannell representatives and Jon Monson of Compass Commodities regarding the start of construction. Mr. Kerth from Scannell noted that some of these items would need to be reviewed by his team before approval.
- **Vote:** Passes, 4-1 with Councilmember Caiharr dissenting.

10. City Manager Report

- City Manager mentioned a potential City Council planning retreat which would take place prior to the budget process to be led by Mike Condiff.

11. Council and Mayor Comments

Councilmember Caiharr asked about the upcoming Chili Feed drive thru event, which Mr. Daniel noted the deadline to sign up is Tuesday, March 23 and noted that it will take place from 5:00 to 7:00 and will provide free meals to the high-rise facility. Councilmember Caiharr recapped the recent Harvesters event.

Councilmember Shriver thanked Councilmember Caiharr for the mobile pantry event planning.

Councilmember Adams thanked Public Works Director Zenger for the phone call related to upcoming activity along Riverview. He also asked that the Council schedule a work session related to the Towne Center project, which would take place on Thursday.

Councilmember Stites noted he believes the discussion regarding the sewer was important for the community to stay on top of north end development.

ADJOURNMENT

The meeting was adjourned at 9:10 p.m.

Zachary Daniel

City Clerk

ITEM #2

**TO: MAYOR & CITY COUNCIL
FROM: SEAN MILLESON, FINANCE DIRECTOR
DATE: April 12, 2021
SUBJECT: STATEMENT OF BILLS**

FOR YOUR REVIEW

Statement of Bills 3/18/2021-4/7/2021

RECOMMENDATION

City Council to approve the Statement of Bills from 3/18/2021 through 04/07/2021 as submitted

FINANCIAL IMPACT

The total of the Statement of Bills is as follows:

General	\$ 181,166.79
Payroll (03/26/2021)	\$ 97,758.22
Cash Bond	\$ 1,350.00
General Obligation Bond	\$ 21,065.75
Electronic Funds Transfer	\$ 46,682.11
Cemetery	\$ -
Payroll Taxes submitted by Paycor (3/26/2021)	\$ 32,855.07
Total	\$ 380,877.94

Check #1443 and #1444 was presented to BHC Rhodes for Engineering Design for the 98th Street Project in conjunction with the 2019 General Obligation Bonds.

Check #153109 was presented in the amount of \$11,664.51 to NBH Bank for the Public Works Department 2018 Ford F-450 w/Tilt Bed.

Check #153115 was presented to Shawnee Mission Ford in amount of \$33,202.00 for Parks and Recreation Vehicle from the Special Sales Tax Fund 275.

**IF YOU HAVE ANY QUESTIONS REGARDING THE STATEMENT OF BILLS, PLEASE
FEEL FREE TO CALL PRIOR TO THE COUNCIL MEETING.**

Check Register Report

AP 03.18.21-4.7.21

Date: 04/08/2021

Time: 9:06 am

City of Edwardsville

BANK: BANK MIDWEST-CHECKING

Page: 1

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
BANK MIDWEST-CHECKING Checks								
153072	03/22/21	Reconciled		03/31/21	NI08	JUSTICE NICHOLSON	UTILITY PAYMENT REFUND	96.34
153073	03/25/21	Reconciled		03/31/21	BA49	BARDAVON HEALTH INNOVATIONS	POET-BRADLEY HOCEVAR	75.00
153074	03/25/21	Reconciled		03/31/21	BH01	BHC RHODES CIVIL ENGINEERS	102ND ST REVIEW & ST DETAIL	612.50
153075	03/25/21	Printed			BL07	BLUE SKY CLEANERS	PD CLOTHING MAINT	231.16
153076	03/25/21	Printed			BO02	BONNER-EDWARDSVILLE CHAMBER	GIFT CERTIFICATES FOR FLU SHOT	220.00
153078	03/25/21	Printed			CA30	CARTER WATERS	SATUROCK-3 & 4 TON	585.49
153079	03/25/21	Reconciled		03/31/21	CI25	CITY-WIDE MAINTENANCE	CITY WIDE CLEANING	1,410.91
153080	03/25/21	Printed			CR15	CROSBY PLUMBING	FIXING THE WATER SPOUT AT CP	160.00
153081	03/25/21	Reconciled		03/31/21	DU08	DAVID K DUCKERS	MUNICIPAL JUDGE FEES	1,200.00
153082	03/25/21	Reconciled		03/31/21	KCPL	EVERGY	STREET LIGHTS,SHOP,RVWV	241.61
153083	03/25/21	Reconciled		03/31/21	GE006	GEORGE BUTLER ASSOCIATES	2021 BI-ANNIAL BRIDGE INSPEC	1,000.00
153084	03/25/21	Printed			KB02	KBS CONSTRUCTORS INC	PD RENNOVATIONS (CARES ACT-FINAL)	22,644.00
153085	03/25/21	Reconciled		03/31/21	KC21	KC DISPOSAL	RESIDENTIAL TRASH PICKUP	18,024.18
153086	03/25/21	Printed			LA34	LABORCHEX INC	BACKGROUND CHECK J.WALLAR CITY	52.58
153087	03/25/21	Printed			LU09	LUKE HEATING & AIR CNDTNG LLC	HALL HEATER REPAIR	163.25
153088	03/25/21	Printed			MA07	MARC	YEARLY DUES	1,572.00
153089	03/25/21	Reconciled		03/31/21	DE34	MELISA ANN DEHON	CITY ATTORNEY FEES	3,712.50
153090	03/25/21	Reconciled		03/31/21	SH22	SHAWNEE COPY CENTER	#10 ENVELOPES	251.61
153091	03/25/21	Printed			TO01	TOTAL ELECTRIC CONTRACTORS INC	98/WOODEND LIGHT REPLACEMENT	425.40
153092	03/25/21	Printed			UN21	UNIFIED GOVERNMENT OF WYAN CTY	WASTEWATER TREATMENT	26,489.65
153093	03/25/21	Reconciled		03/31/21	WY09	UNIFIED TREASURER	BOOK FEES	3,687.25
153094	03/25/21	Printed			DE01	WASTE MANAGEMENT	FINAL WM PAYMENT	1,000.00
153095	03/25/21	Printed			WE07	RICHARD S. WETZLER	MUNICIPAL JUDGE FEES	975.00
153096	04/02/21	Printed			NI04	911 CUSTOM, LLC	REGLUE CAMERA SYSTEM	75.00
153097	04/02/21	Printed			AM28	AMERICAN EQUIPMENT CO	T LATCH FOR T-2 TOOLBOX	48.50
153098	04/02/21	Printed			BL07	BLUE SKY CLEANERS	PD MARCH 2021 CLOTHING MAINT	251.85
153099	04/02/21	Printed			BO01	BOARD OF PUBLIC UTILITIES	EDW CEM UTILITY	24.08
153100	04/02/21	Printed			CA30	CARTER WATERS	SATUROCK 4 TON	358.00
153101	04/02/21	Printed			CR30	CRAFCO INC	CRACK SEAL, RIVER FALLS, RENTA	4,815.00
153102	04/02/21	Printed			CR15	CROSBY PLUMBING	HYDRANT WORK AT CITY PARK	160.00
153103	04/02/21	Printed			EM12	EMH	COM CENT WATER USUAGE	25.84
153104	04/02/21	Printed			FT01	FTC EQUIPMENT	FTC EQUIPMENT, PUMP #SLP-7	3,325.56
153105	04/02/21	Printed			KC14	KANSAS CITY SECURITY SYS INC	MNTHY SEC MONITORING	30.99
153106	04/02/21	Printed			KI23	KIRBY-SMITH MACHINERY, INC	SKID LOADER PICKUP BROOM RENTA	450.00
153107	04/02/21	Printed			MI64	MIDWEST PUBLIC RISK	DEDUCTIBLE INVOICE	1,000.00
153108	04/02/21	Printed			MU10	MULTIPLE SERVICES EQUIPMENT	POST BASE LABELS	36.30
153109	04/02/21	Printed			LO16	NBH BANK	2018 FORD F-450 W/TILT BED	11,664.51
153110	04/02/21	Printed			NE35	NETSTANDARD INC	MNTHLY SERV CONTRACT	4,893.40
153111	04/02/21	Printed			NY01	NYP CPA, LLC	ACCOUNTING SERVICES	1,207.50
153112	04/02/21	Printed			RE40	REDDI SERVICES KC	VACUUM, HYDRO JET & PUMP	2,877.32
153113	04/02/21	Printed			SA18	SALTUS TECHNOLOGIES	DIGI TICKET PAPER PD	510.00
153114	04/02/21	Printed			SH36	SHAWNEE MISSION FORD INC	PD VEHICLE MAINT	101.11
153115	04/02/21	Printed			SH36	SHAWNEE MISSION FORD INC	PARKS & REC VEHICLE	33,202.00
153116	04/02/21	Printed			US08	US AUTO FORCE	NEW TIRES PD	1,083.76
Total Checks: 44							Checks Total (excluding void checks):	150,971.15

BANK MIDWEST-CHECKING EFTs

1149429	03/19/21	Reconciled		03/19/21	DE21	DELL MARKETING LP	COMPUTER ORDER (CARES ACT)	21,392.04
1149430	03/19/21	Reconciled		03/19/21	WI39	WILLIAMS SCOTSMAN CORP OP	FD TEMP OFFICE SPACE	395.55

Check Register Report

AP 03.18.21-4.7.21

Date: 04/08/2021

Time: 9:06 am

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City of Edwardsville

BANK: BANK MIDWEST-CHECKING

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
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BANK MIDWEST-CHECKING EFTs

1149431	04/02/21	Reconciled		04/02/21	DE21	DELL MARKETING LP	FD NEW LAPTOPS	8,408.05
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Total EFTs: 3

EFTs Total (excluding void checks): 30,195.64

Total Payments: 47

Bank Total (excluding void checks): 181,166.79

Check Register Report

AP 03.18.21-4.7.21

Date: 04/08/2021

Time: 9:06 am

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City of Edwardsville

BANK: BANK MIDWEST CASH BOND

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
BANK MIDWEST CASH BOND Checks								
1682	03/26/21	Reconciled		03/31/21	CI19	CITY OF EDWARDSVILLE, KANSAS	CASH BOND APPLIED #46947	1,050.00
1683	03/26/21	Reconciled		03/31/21	HA61	PATRICK HARDESTY	CASH BOND REFUND #507523BB	200.00
1684	03/26/21	Printed			PA41	TREY PAYNE	CASH BOND REFUND #71938	100.00
Total Checks: 3							Checks Total (excluding void checks):	1,350.00
Total Payments: 3							Bank Total (excluding void checks):	1,350.00

Check Register Report

AP 03.18.21-4.7.21

Date: 04/08/2021

Time: 9:06 am

Page: 4

City of Edwardsville

BANK: BANK MIDWEST-GO BONDS

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
BANK MIDWEST-GO BONDS Checks								
1443	03/26/21	Reconciled		03/31/21	BH01	BHC RHODES CIVIL ENGINEERS	98th St. PE	11,335.65
1444	04/02/21	Printed			BH01	BHC RHODES CIVIL ENGINEERS	PROF SERV	9,730.10
Total Checks: 2							Checks Total (excluding void checks):	21,065.75
Total Payments: 2							Bank Total (excluding void checks):	21,065.75

Check Register Report

AP 03.18.21-4.7.21

Date: 04/08/2021

Time: 9:06 am

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City of Edwardsville

BANK: BANK MIDWEST EFT

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
BANK MIDWEST EFT Checks								
6614	04/07/21	Printed			CA34	CARD SERVICES	CITY WIDE CREDIT PURCHASES	34,051.32
6615	04/07/21	Printed			KS06	KANSAS STATE TREASURER	FEB 2021 MUNICIPAL FEES	5,354.50
6616	03/31/21	Printed			FP02	FRANCOTYP-POSTALIA, INC	CITY WIDE POSTAGE	500.00
6617	03/31/21	Printed			FL04	WEX BANK	CITY WIDE GASOLINE	6,776.29
Total Checks: 4							Checks Total (excluding void checks):	46,682.11
Total Payments: 4							Bank Total (excluding void checks):	46,682.11

Check Register Report

AP 03.18.21-4.7.21

Date: 04/08/2021

Time: 9:06 am

City of Edwardsville

BANK: PAYROLL EFT

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Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
PAYROLL EFT Checks								
150	03/26/21	Reconciled		03/31/21	FOP	FOP LODGE 42	POLICE DUES	90.00
151	03/26/21	Reconciled		03/31/21	IC02	ICMA	ICMA	1,857.21
152	03/26/21	Reconciled		03/31/21	IN24	INTL ASSOC FIRE FIGHTERS #64	FIRE DUES	230.25
153	03/26/21	Reconciled		03/31/21	KA07	MIDWEST PUBLIC RISK	MPR MARCH PREMIUM	60,504.00
154	03/26/21	Reconciled		03/31/21	PA37	PAYCOR	PAYCOR FEES	148.84
155	03/26/21	Reconciled		03/31/21	TX01	TEXAS LIFE	TEXAS LIFE	8.50
156	03/29/21	Reconciled		03/31/21	KPER	K.P.E.R.S.	KPERS	5,644.62
157	03/29/21	Reconciled		03/31/21	KP&F	KANSAS POLICE & FIRE	KPF	27,686.48
158	03/30/21	Reconciled		03/31/21	AF01	AFLAC	AFLAC	183.70
159	03/30/21	Reconciled		03/31/21	AM26	AMERICAN FIDELITY ASSURANCE	FSA	1,404.62

Total Checks: 10 **Checks Total (excluding void checks): 97,758.22**

Total Payments: 10 **Bank Total (excluding void checks): 97,758.22**

Total Payments: 66 **Grand Total (excluding void checks): 348,022.87**

TO: MAYOR & CITY COUNCIL
FROM: MICHAEL WEBB, CITY MANAGER
LISA DEHON, CITY ATTORNEY
DATE: APRIL 12, 2021
SUBJECT: TELECOMMUNICATIONS FRANCHISE TO UNITE PRIVATE NETWORKS, LLC.

RECOMMENDATION

City Council to consider adoption of Ordinance No. 1041 granting a telecommunications franchise to Unite Private Networks, LLC.

FINANCIAL IMPACT

The City receives 5% of the gross receipts for certain telecommunication services that Unite collects within the City.

BACKGROUND

Franchise Ordinances are typically customary and standard formats. A request for the granting of a Franchise Ordinance is required by state law to be conducted on a competitively neutral and nondiscriminatory basis. This proposed franchise Ordinance No. 1041 includes the same basic terms as applied to all other persons or entities who have requested the same authority to use the right-of-way. The City Council may only deny a request for a franchise ordinance after reasonable notice and an opportunity to be heard, and if the City Council reasonably determines that such a denial is necessary to protect the public health and safety.

This is a franchise ordinance permitting Unite Private Networks, LLC ("Unite") to construct, operate and maintain a telecommunications system within the City. This franchise ordinance is substantially similar to the City's current franchises with other telecommunication entities. The franchise provides that any use of the right-of-way by Unite is subordinate to the City's health, safety and welfare requirements and regulations, including the City's right-of-way management code. The franchise does not include the right to use any other city-owned facilities, parkland, or property. The franchise agreement contains a provision allowing for renegotiation upon the occurrence of certain events including but not limited to change in law, regulation or other unanticipated material changes. The franchise term is for an initial ten-year term with up to ten automatic renewal terms of one year each for a total of 20 years.

The staff recommends the City Council adopt Ordinance No. 1041 granting a telecommunications franchise to Unite Private Networks, LLC.

ORDINANCE NO. 1041

AN ORDINANCE GRANTING TO UNITE PRIVATE NETWORKS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF EDWARDSVILLE, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDWARDSVILLE:

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless Telecommunications Services, the sale or lease of unbundled loop Facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of Access Lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access Line Remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access Line Fee, as determined in the City, by the number of Access Lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Edwardsville.
- f. "Contract Franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide Telecommunications Services within the City.

- g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
- h. "Grantee" – means Unite Private Networks, LLC, a telecommunications Local Exchange Service provider providing Local Exchange Service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the Contract Franchise and which are derived from the following: (1) Recurring Local Exchange Service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange Access Line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; and (6) Nonrecurring Local Exchange Service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless Telecommunications Services, lines providing only data service without voice services processed by a telecommunications Local Exchange Service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from Gross Receipts. Gross Receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within Gross Receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term Local Exchange Service shall not include wireless communication services.
- k. "Public Right-of-Way" - means only the area of real property in which the City has a dedicated or acquired Right-of-Way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as Right-of-Way. The term does not include the airwaves above a Right-of-Way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

- a. There is hereby granted to Grantee this nonexclusive Contract Franchise to construct, maintain, extend and operate its Facilities, including the right to lease Facilities in whole or in part to affiliates and third parties (provided that Grantee retains ownership of such

Facilities), along, across, upon or under any Public Right-of-Way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract Franchise, subject to the terms and conditions of this Contract Franchise. Grantee shall not permit any affiliate or third party to physically access the Facilities in the Public Right-of-Way without obtaining a permit from the City.

- b. The grant of this Contract Franchise by the City shall not convey title, equitable or legal, in the Public Right-of-Way, and shall give only the right to occupy the Public Right-of-Way, for the purposes and for the period stated in this Contract Franchise. This Contract Franchise does not:
 - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
 - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public Right-of-Way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
 - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public Right-of-Way or other public property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract Franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract Franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public Right-of-Way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract Franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public Right-of-Way. Such Facilities shall be

so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities. Grantee facilities shall not interfere with the City's water mains, sewer mains or other municipal use of streets and other public places. Grantee facilities shall be located so as to cause minimum interference with public use of streets and other public places.

- b. Grantee's use of the Public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public Right-of-Way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public Right-of-Way.
- c. Grantee shall participate in the Kansas One Call utility location program.
- d. All construction, excavation, maintenance and repair work done by the Grantee shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Grantee shall comply with all applicable state and federal codes.
- e. City shall require Grantee to repair all damage to a Public Right-of-Way caused by the activities of Grantee, or of any agent, affiliate, employee, or subcontractor of Grantee, while occupying, installing, repairing or maintaining Facilities in the Public Right-of-Way and to return the Right-of-Way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If, after the expiration of a reasonable period, Grantee fails to make the repairs required by the City, the City may affect those repairs and charge Grantee the cost of those repairs. If the City incurs damages as a result of a violation of this subsection, then the City shall have a cause of action against Grantee for violation of this subsection and may recover its damages, including reasonable attorney fees, if Grantee is found liable by a court of competent jurisdiction.

All Facilities of Grantee shall be installed and maintained in accordance with all applicable federal, state and local laws, rules, and regulations, including, but not limited to, the City's applicable permit application and construction requirements for attachments to City Facilities, the City's adopted building and electrical codes, and the City's Municipal Code, City regulations and Policy Statements, including, but not limited to those relating to the construction and use of the Public Right-of-Way or other public property or private property, (collectively, the "Codes"). Grantee shall, at its own expense, make and maintain its Facilities in safe condition and good repair, in accordance with all Codes and Grantee shall replace, remove, reinforce or repair any defective Facilities.

When the City reasonably believes there is an Emergency or Facilities of Grantee present an immediate threat to the safety of any person, interferes with the performance of the City's service obligations or poses an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Grantee. As soon as practicable thereafter, the City will advise Grantee of the work performed or the action taken. Grantee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work except to the extent

of the City's gross negligence or willful misconduct in connection with such liability. An "Emergency" is a condition that in the discretion of the City (i) poses an immediate threat to the safety of any person or the public; (ii) materially or adversely interferes with the performance of City's service obligations; or (iii) poses an immediate threat to the integrity of City's equipment or property.

- f. If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public or to permit the City to change street grades, pavements, sewers, water mains or other City works, Grantee promptly shall remove its Facilities from the Public Right-of-Way or shall relocate or adjust its Facilities within the Public Right-of-Way at no cost to the City, providing such request binds all users of such Public Right-of-Way. If removal is required, the City agrees to work with Grantee on an alternative route that will allow Grantee to continue to meet its contractual obligations with its customers. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the City for such relocation or adjustment, providing the City shall use its best efforts to provide Grantee with a minimum of ninety (90) days advance notice to comply with any such relocation or adjustment. Any damages suffered by the City or its contractors as a result of Grantee's failure to timely relocate or adjust its Facilities shall be borne by Grantee. Grantee shall designate one (1) person within its organization by his/her employment position to whom relocation notices shall be sent and with whom rests the responsibility to facilitate all necessary communications within Grantee's various areas.

Where a project referenced in the preceding paragraph is primarily for private benefit (provided, however, that projects that are a part of a City-created tax increment financing or transportation development district are not considered primarily for private benefit), the City shall require, as a condition of its approval of any request for alteration of the Public Right-of-Way from any private party or parties, that such private party or parties shall reimburse Grantee for the cost of relocation. Grantee understands, however, that the City has no obligation to collect such reimbursement.

- g. If during the term of this Franchise the boundaries of the City are expanded, the Grantee may, subject to the terms of Grantee's applicable tariff provisions for main extensions, extend service to the newly incorporated areas. Service to annexed areas shall be in accordance with the terms of this Franchise agreement. The City will promptly notify Grantee in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Grantee by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Grantee may reasonably require in ascertaining whether there exist any customers of Grantee receiving natural gas service in said annexed area. To the extent there are such Grantee customers therein, then the Gross Receipts of Grantee derived from the sale and distribution of natural gas to such customers shall become Subject to the Franchise fee provisions hereof effective on the first day of Grantee's billing cycle immediately following Grantee's receipt of the Annexation Notice. The failure by the City to advise Grantee in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Grantee from any obligation to remit any Franchise fees to City based upon Gross Receipts derived by Grantee from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Grantee in accordance with the terms hereof.

SECTION 4. COMPENSATION TO THE CITY.

In consideration of this Contract Franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by the appropriate percentage. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract Franchise shall continue to be based on a sum equal to the appropriate percentage of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access Line Fee in the following calendar year; provided, such Access Line Fee shall not exceed the maximum Access Line Fee allowed by Statute. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

- a. Beginning January 1, 2021, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access Line Fee or Gross Receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access Line fee.
- b. Grantee shall pay on a quarterly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- c. Upon forty-five (45) days prior written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.
- d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is, in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.
- e. To verify the correctness of the franchise fees paid by Grantee and Grantee's compliance with this Agreement, the City shall have the right to examine, audit, inspect, review, and/or obtain copies of (collectively, "Audit") at its sole cost and expense, except as set forth in this subsection e, the papers, books, accounts, documents, maps, plans and other records (collectively, the "Records") of Grantee pertaining to all revenue derived by Grantee from the operation of the Telecommunications service during any single year of this contract. Notice of Audit shall be provided by City to Grantee upon no fewer than sixty (60) business days written notice and shall be performed no more often than once per calendar year. Grantee shall fully cooperate in making reasonably available its Records and otherwise assisting in these activities as is necessary for City to reasonably verify the correctness of the franchise fees paid by Grantee in the year subject to Audit. The City may extend the time for the provision of such Records upon a reasonable showing by Grantee that such extension is justified. In the event that such Audit discloses an underpayment by Grantee of more than five percent (5%) between the financial report

submitted by the Grantee with a monthly payment and the actual Gross Revenues collected by Grantee that are subject to the franchise fees, as determined by the Audit, and unless Grantee challenges the findings of the Audit, the Grantee agrees to pay the City the costs of such Audit; provided, however that (a) the City will not be entitled to reimbursement of such Audit costs more than once in any five (5) year period, and (2) the total reimbursement to the City in any five (5) year period for the Audit costs shall not exceed one hundred fifty percent (150%) of the amount of the discrepancy or actual costs, whichever is less. In the event that such Audit results in a determination that additional franchise fees are due the City, Grantee shall be provided a copy of said Audit and provided thirty (30) days to pay or contest the results of the Audit. Grantee further agrees that, where it is required to remit additional franchise fees as a result of an Audit, it agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable.

- f. Unless previously paid, within sixty (60) days of the effective date of this Ordinance, Grantee shall pay to the City a one-time application fee of One-Thousand Dollars (\$1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Ordinance.
- g. The franchise fee required herein shall be in addition to, and not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The franchise fee is compensation pursuant to K.S.A. 12-2001(j) and shall in no way be deemed a tax of any kind.
- h. Grantee shall remit an Access Line (franchise) fee or a Gross Receipts (franchise) fee to the City on those Access Lines that have been resold to another telecommunications Local Exchange Service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a franchise ordinance. Such access line (franchise) fee or gross receipts (franchise) fee shall be in the same amount or percentage as the franchise fee set forth in subsection 4(a) hereinabove.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

To the extent permitted by K.S.A. 17-1902, Grantee shall indemnify, defend, and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence or intentional conduct of Grantee, any agent, officer, director, representative, employee,

affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public Right-of-Way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public Right-of-Way.

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND

- a. During the term of this Contract Franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
 - (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law; and
 - (2) Employers' liability limit with a limit of \$1,000,000 each accident/disease/policy limit law; and
 - (3) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract Franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred. Evidence of additional insured status shall include verification of any necessary policy endorsement.
- c. Grantee shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Upon receipt of notice from its insurer(s) Grantee shall provide the City thirty (30) days' prior written notice of

cancellation or material change in its insurance coverage. Grantee shall make available to the City on request at Grantee's local office in the City or Grantee's nearest office to the City the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond, payable to the City to ensure the appropriate and timely restoration and performance in the construction and maintenance of Facilities located in the Public Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. The performance and maintenance bond shall be in one of the following formats:

(a) A performance and maintenance bond in the City's name for the amount of \$5,000.00, or the value of the restoration, whichever is greater, which shall be conditioned upon the contractor's faithful performance of the provisions, terms, and conditions of the Public Right-of-Way work permit or the street excavation permit, and conditioned against defects in workmanship for a period of 2 years after the date of completion and acceptance. A bond for a single permit may not be used to satisfy the surety requirements for a General Utility Land Disturbance Permit.

(b) A performance and maintenance bond in the City's name for the amount of \$50,000.00, or the value of the restoration for all Public Right-of-Way work permits and street excavation permits issued, whichever is greater, which shall be automatically renewed annually until the end of the maintenance period for any permit held, conditioned upon the permit holder's faithful performance of the provisions, terms, and conditions of the permit, and conditioned against defects in workmanship for a period of 2 years after the date of completion and acceptance.

SECTION 7. REVOCATION AND TERMINATION.

In case of failure on the part of Grantee to comply with any of the provisions of this Contract Franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract Franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract Franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract Franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract Franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract Franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract Franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract Franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract Franchise shall be deemed revoked and

terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract Franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract Franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

SECTION 8. RESERVATION OF RIGHTS.

- a. The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- d. In entering into this Contract Franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract Franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. the City's Right-of-Way ordinance referenced in Section 3b of this Contract Franchise) and/or rulings.

SECTION 9. FAILURE TO ENFORCE.

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

SECTION 10. TERM AND TERMINATION DATE.

- a. This Contract Franchise shall be effective upon passage and publication as required by law for a term of ten (10) years. This Agreement can be extended upon mutual consent of the Parties. Thereafter this Contract Franchise will automatically renew for ten (10) additional one (1) year terms, unless either party notifies the other party of its intent

to terminate or renegotiate the Contract Franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.

- b. Upon written request of either the City or Grantee, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract Franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract Franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract Franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract Franchise.
- d. Amendments under this Section, if any, shall be made by Contract Franchise ordinance as prescribed by statute. This Contract Franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- e. In the event the parties are actively negotiating in good faith a new Contract Franchise ordinance or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new Contract Franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact’s name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. “Business day” for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Edwardsville, Kansas
690 S. 4th Street
P.O. Box 13738
Edwardsville, KS 66113
Attn: City Clerk
Fax: (913) 441-3805

Grantee:

Unite Private Networks, LLC
Attn: VP of Real Estate
7200 NW 86th Street, Suite M
Kansas City, MO 64153

Phone: (913) 356-6000

or to replacement addresses that may be later designed in writing.

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract Franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with Grantee or to any entity acquiring all or substantially all of Grantee's assets. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract Franchise, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee.

SECTION 13. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract Franchise.

SECTION 14. ACCEPTANCE OF TERMS.

Grantee shall have sixty (60) days after the final passage and approval of this Contract Franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract Franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract Franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the date Grantee files acceptance with the City ("Effective Date").

SECTION 15. PAYMENT OF COSTS.

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract Franchise, and any amendments thereof.

SECTION 16. SEVERABILITY.

If any clause, sentence, or section of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract Franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract Franchise.

SECTION 17. FORCE MAJEURE.

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.

SECTION 18. GOVERNING LAW

This Agreement shall be interpreted and enforced according to, and the parties’ rights and obligations governed solely by, the laws of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the federal court with jurisdiction over Wyandotte County, Kansas or the state court located in Wyandotte County, Kansas.

SECTION 19. PUBLICATION

The City Clerk is hereby directed to publish this Contract Ordinance once in an official newspaper.

PASSED by the Governing Body of the City of Edwardsville this ____ of April, 2021.

APPROVED by the Mayor this ____ of April, 2021.

John McTaggart, Mayor

ATTEST:

Zack Daniel, City Clerk

APPROVED AS TO FORM:

Lisa Dehon, City Attorney

UNITE PRIVATE NETWORKS, LLC

By: _____

Title _____

Date: _____

CITY COUNCIL MEETING – APRIL 12, 2021

CITY MANAGER REPORT

ADMINISTRATION

- Discussions continue on Fiber Network Project funded by the CARES Act between Edwardsville, Bonner Springs, the Unified Government, and USD 204
- BHC is planning to provide an update on the 98th Street study at the April 26, 2021 City Council meeting
- Staff is finalizing the design details and raising awareness of the new utility bill format, which will be on a postcard size notice beginning with the next billing (due May 15)

FIRE DEPARTMENT/EMS

- EFD provided 122-man hours in controlled burns and vegetation management on the southern portions of the trail and the culvert at Woodend & Betts Creek. An additional 42-man hours was put in clearing growth in the ditch at 4th Street, just north of Kaw Dr. near the Methodist Church
- EFD has responded to several grass/brush/tree fires recently.
- EFD/EMS will provide free COVID testing to coaches and officials for the Spring Soccer season.

POLICE DEPARTMENT

- A number of officers involved in the recent investigation of the tragic death of a child participated in a Peer Support session coordinated by personnel from the Wyandotte County Sheriff's Office and moderated by the KCK PD.
- An officer investigating a stolen vehicle during a traffic stop was dragged by the vehicle as it sped away. The officer was treated for moderate injuries. The investigation has led to the identification of the suspect and the issuance of an arrest warrant. Federal taskforce agents are assisting.

PUBLIC WORKS

- The Riverview and 102nd St. culvert project is expected to be completed this week.
- Public Works staff has been patching pot holes throughout the City
- The Riverview Crossroads project is scheduled to begin April 26 (weather permitting). Utility relocations have stalled the start date.

PARKS & REC

- The first quarterly community meal at the Community Center took place on March 26 and provided over 140 meals to participants and residents of the senior high-rise facility. EFD, Parks, and administrative staff assisted with meal preparation and delivery to the high-rise.
- Soccer games began this past weekend. Saturday games were pushed to Sunday due to rain (at present, a Sunday cancellation is possible depending on rain levels).
- Summer baseball signups are now live. As was the case for Spring Soccer, registration rates are being reduced for the 2021 season in an effort to encourage more participation.
- The CPPS Board will be considering costs for a monument restoration project at its next meeting, April 14.
- Local company Goats-on-the-Go are currently scheduled to provide vegetation management services at the Stony Point Cemetery site in late spring/early summer.