



**AGENDA
CITY OF SHERIDAN
OCTOBER 14, 2024
STUDY SESSION COUNCIL MEETING START 5:30 P.M.**

1. Discussion of Resolution 37-24 Authorizing the Submission of an Energy Efficiency and Conservation Block Grant Application to the U.S. Department of Energy - City Engineer Thomas Morneau
2. Discussion of Resolution 38-24 Renewing the Unite Private Network (UPN) Franchise Agreement - Utilities Director Dan Roberts
3. Discussion of Resolution 40-24; Authorizing Assignment of UPN Franchise to Northwest Fiber Management, LLC (dba Ziply Fiber) - Utilities Director Dan Roberts
4. Discussion of Ownership Member Transfer of Retail Liquor License #9 - Wyoming Downs OTB4, LLC - Interim City Clerk Candace Ainslie
5. General Discussion and Potential Future Agenda Items - City Administrator Stuart J. McRae
 1. Update on M1/M2 Zoning and Downtown Overlay Districts



CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801

Ph (307) 674-6483 Fax (307) 674-2195

Public Works

MEMORANDUM

RE: Discussion of Resolution 37-24 Authorizing the Submission of an Energy Efficiency and Conservation Block Grant Application to the U.S. Department of Energy - City Engineer Thomas Morneau

From: Thomas Morneau, City Engineer

To: City Council

CC:

Date: 09/30/2024

Recommendation:

Staff recommends that the Mayor and City Council approve Resolution 37-24 authorizing the submission of an Energy Efficiency and Conservation Block Grant application to the U.S. Department of Energy.

Staff requests that the Public Works Director, Hanns Mercer, be designated as the authorized representative of the City of Sheridan to act on behalf of the Mayor and Council on all matters related to this grant application.

Background:

The City of Sheridan has critical mechanical components in need of updating to reduce energy use, reduce fossil fuel emissions, and improve energy efficiency. The City Hall building has an annex operating with a 19 year old furnace.

Discussion:

The City of Sheridan is eligible for \$75,670.00 from the Department of Energy to pursue projects that promote cost-saving energy efficiency. This is a non-competitive grant. The grant application is due by October 31, 2024

Funding:

No funding match required from the City.

Attachments

RES 37-24

CITY OF SHERIDAN
RESOLUTION 37-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERIDAN, WYOMING, SUPPORTING THE FEDERAL GRANT PROPOSAL FOR THE U.S. DEPARTMENT OF ENERGY’S ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM TO REPLACE THE FURNACE IN THE CITY HALL ANNEX

WHEREAS, the City of Sheridan (the “City”) has critical mechanic components in need of updating to reduce energy use, reduce fossil fuel emissions, and improve energy efficiency;

WHEREAS, the City Hall building has an annex operating with an old furnace.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SHERIDAN, WYOMING:

- 1. The above recitals are true, correct, and adopted hereby as findings, purpose, and intent of the City Council.
- 2. The City supports the application to the U.S. Department of Energy’s Energy Efficiency and Conservation Block Grant Program to replace the furnace in the City Hall annex, a project that will reduce energy use, reduce fossil fuel emissions, and improve energy efficiency in City Hall.

BE IT FURTHER RESOLVED:

That Hanns Mercer, PE, Public Works Director for the City, is hereby designated as the authorized representative of the City of Sheridan, Wyoming to act on behalf of the Governing Body on all matters relating to this grant application.

PASSED, APPROVED AND ADOPTED this 21st day of October 2024.

City of Sheridan

Richard Bridger, Mayor

ATTEST:

Candace Ainslie, City Clerk



CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801

Ph (307) 674-6483 Fax (307) 674-2195

Utilities

MEMORANDUM

RE: Discussion of Resolution 38-24 Renewing the Unite Private Network (UPN) Franchise Agreement -
Utilities Director Dan Roberts

From: Dan Roberts, Utilities Director

To: City Council

CC: City Administrator Stuart McRae

Date: 10/09/2024

Recommendation:

Staff recommends that the Mayor and City Council approve Resolution 38-24 renewing the Unite Private Networks (UPN) Franchise Agreement for a period of five (5) years from its date of expiration.

Background:

On May 21, 2012, the Sheridan City Council passed and approved Ordinance No. 2125 (attached) which granted to Unite Private Networks, LLC (Grantee), and to its successors and assigns, a nonexclusive franchise to operate a communications system within the City of Sheridan. Ordinance No. 2125 and its terms stated within make up a Franchise Agreement (Agreement) between the City and Grantee. Article 2, Paragraph 2.4 states a term of 10 years subject to renewal by the parties. In addition, it states the City will not unreasonably refuse to extend the Franchise for an additional five (5) years if the Grantee is in compliance with the terms of the Agreement and applicable law, and the compensation terms are acceptable to both parties. The Agreement also states, in Article 2, paragraph 2.4 the City of Sheridan (City) and Unite Private Networks (UPN) entered into a Franchise Agreement (Agreement) on July 31, 2012. This agreement has been in effect since with an initial term of ten (10) years, subject to renewal by the parties. The City stated they will not unreasonably refuse to extend the Franchise for an additional five (5) years if Grantee is in compliance with the terms of this agreement and applicable law, and the compensation terms are acceptable to both parties.

Discussion:

The Grantee has requested the five (5) year extension made available within the Agreement. A specific written request was not submitted prior to the end of the ten (10) year term limit. However, it has been the Grantee's intentions all along to continue to operate under the terms of the Franchise Agreement within the five (5) year extension period.

A formal request came to the City early in 2023, but the matter did not make it before City Council for formal consideration and approval. Staff has since re-established communications with the Grantee and have gained some understanding about their Franchise and their plans moving forward. The Grantee desires to continue to have the Franchise operate under the same terms and in the same manner into the future. In order to do so, they would like to have the City Council consider a five (5) year extension to the Agreement which met its term limits on May 21, 2022. If approved by the City Council, the five (5) year extension would be backdated to start at the initial termination date thereby making the Agreement renewed through May 21, 2027.

Staff's review of the Grantee's performance under the Agreement found that they have been in compliance and met

the terms of the Agreement all the way up to the renewal period. In consideration of this, granting the five (5) year extension is recommended to the City Council. Resolution 38-24 has been prepared for the City Council's consideration. If approved, the would effectuate the Agreement renewal and five year extension.

It should be noted that the City has not received franchise fee payments from Grantee for the period of the Agreement. It's not foreseen that the City will receive any franchise fees in the future either. The reason being is that the Grantee does not provide retail service and they do not receive compensation that would be considered "Gross Revenue" (Revenue from which a franchise fee is calculated as a % of) for operating their Franchise. The Grantee receives payment through the federal government's E-rate program. This program provides discounted telecommunications, Internet access, and internal connections to eligible schools, funded by the Universal Service Fund. The Grantee solely owns and operates the fiber network and receives payments from the E-rate program for doing so; but they do not provide any retail services, e.g., telecommunications, cable, or internet services over that network. Their fiber network exclusively serves (connects the facilities with fiber) Sheridan County School District #2.

Attachments

Resolution 38-24

Ordinance 2125 UPN Franchise

**CITY OF SHERIDAN
RESOLUTION 38-24**

A RESOLUTION GRANTING THE RENEWAL OF THE UNITE PRIVATE NETWORKS, LLC (“UPN”) FRANCHISE AGREEMENT, ALLOWING UPN TO OPERATE AND MAINTAIN A COMMUNICATIONS SYSTEM IN SHERIDAN, WYOMING (“CITY” OR “THE CITY”).

WHEREAS, under Wyoming Statute §15-1-103(a)(xxxiii), a city may grant franchises for such terms as the governing body deems proper to any utility company, provided no franchise may be entered into with any person in which that person is given an exclusive right for any purpose whatsoever;

WHEREAS, Communications Franchise Ordinance No. 2125 (the “Franchise”) granted UPN a nonexclusive franchise to operate a communications system within the City;

WHEREAS, the Franchise provided for a ten (10) year term subject to renewal by the parties for an additional five (5) years; and

WHEREAS, this Resolution authorizes the Franchise to be renewed and extended for the additional five (5) years making the franchise, and its terms, valid until May 21, 2027.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERIDAN HEREBY ESTABLISH:

The City agrees to the renewal and extension of the Franchise to UPN, and to its successors and assigns as approved therein, granting a nonexclusive franchise to operate a communications system within the City for the additional five (5) year term making the Franchise valid until May 21, 2027.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2024.

City of Sheridan

Rich Bridger, Mayor

ATTEST:

Candice Ainsle, Interim City Clerk

COMMUNICATIONS FRANCHISE ORDINANCE

NO. 2125

AN ORDINANCE GRANTING TO UNITE PRIVATE NETWORKS, LLC, AND TO ITS SUCCESSORS AND ASSIGNS AS APPROVED HEREIN, A NONEXCLUSIVE FRANCHISE TO OPERATE A COMMUNICATIONS SYSTEM WITHIN THE CITY OF SHERIDAN, WYOMING, AND ESTABLISHING THE TERMS OF THE FRANCHISE

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHERIDAN, WYOMING:

ARTICLE 1 DEFINITIONS

1.0 For the purpose of this Franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common and ordinary meaning.

1.1 Affiliate. When used in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.2 City. City of Sheridan, Wyoming and includes the territory which currently is or in the future is included within the boundaries of the City of Sheridan. This term may also refer to the mayor of the City or his or her designee.

1.3 City Council. Or, "Governing Body", refers to the legislative and governing body of the City.

1.4 Franchise. This document, all exhibits thereto, all matters incorporated by reference and all amendments thereto, issued by the City that collectively authorize Grantee to use and occupy the Rights of Way to construct, maintain and operate a Telecommunication System for the purpose of offering Services."

1.5 Grantee. Unite Private Networks, a Delaware Limited Liability Company, or its lawful successor, transferee or assignee.

1.6 Gross Revenues. Any and all revenue of Grantee or its Affiliates, of any kind, nature or form derived from the use or operation of the Telecommunications System regardless of whether such revenue is derived from the provision of Services. Gross Revenues shall include, by way of example and not limitation, any and all revenues from the operation of Grantee's System to provide Services attributable to a location in the City, without regard to where the Service is billed or paid, imposition of any rate riders, installation, late fees, any and all other customer charges and revenues which may be derived from any other use of the Telecommunications System (e.g. pole attachment revenues from telecommunications or similar providers). The term shall include revenues that are received now, as well as new revenue sources that may be developed in the future. Gross Revenues shall not include any amount received by the Grantee as a tax, occupation tax, or assessment of general applicability which the Grantee is required to collect from its customers for pass-through to a governmental agency, nor to bad debt or to refunds or credits issued. Gross Revenues do not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities or stocks, or sales at wholesale by Grantee to another utility when the utility purchasing such services is not the ultimate consumer, is itself a franchisee of the City, and is paying a franchise fee on its Gross Revenues derived from the use of

the Grantee's System. In the case where a single, otherwise unapportionable charge is paid for Service to locations within and outside the City, revenues will be apportioned pro rata based on the number of locations served within and outside the City.

1.7 Person. An individual, partnership, association, joint stock Grantee, trust, corporation, governmental entity, or any other organization authorized to do business in the State of Wyoming

1.8 Right of Way. Public highways, streets, alleys, roads or other public rights of way now or hereinafter dedicated, annexed, owned or controlled by the City within the territorial boundaries of the City, as now exist or as may be extended. However, Right of Way shall not include any designated parks, open space, fire or police stations or similar properties or easements granted to the City. In the event Grantee desires access to any designated park, open space, fire, police or similar property or a particular easement granted to the City, Grantee shall be required to request such access separate and apart from this Franchise.

1.9 Service Area. The present municipal boundaries of the City, and includes any additions thereto by annexation or other legal means.

1.10 Services. Telecommunications services, information services and other communications services provided via the Telecommunications System; the provision of capacity, fibers or other elements of the Telecommunications System to others for a fee; and the installation, provision and maintenance of facilities or equipment in connection with the foregoing or incidental thereto (such as a pole attachment lease). Provided that, Services shall not include the provision of cable services, wireless services or facilities used in the provision of the same.

1.11 Telecommunications System or System. Collectively, all Grantee's facilities within the Right of Way necessary for the Grantee to provide Services, including without limitation plants, works, systems, transmission and distribution structures, lines, equipment, conduit, meters, wires, cables and poles, pedestals, manholes, vaults whether the same be located underground or overhead; or any portion of the same.

ARTICLE 2 GRANT OF FRANCHISE

2.1 Grant of Franchise. The City hereby grants to Grantee a non-exclusive Franchise for the limited purposes and uses and subject to the terms, conditions and provisions provided herein.

2.2 Use of Right of Way.

2.2.1 Grantee shall have the right to establish, construct, maintain and operate into, within, through, and across the Right of Way, a Telecommunications System solely for the provision of Services, pursuant to the terms and conditions contained herein. The Grantee, subject to the terms and conditions contained herein, shall have the right to install, remove, change, alter or extend Telecommunications System as may be necessary for the proper operation and maintenance of the System, in, upon, across or under the Right of Way.

2.2.1 This Franchise shall not include or be a substitute for:

(a) any permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(b) any permit, agreement or authorization required by the Franchising Authority for Right of Way users in connection with operations on or in Right of Way or public property including, by way of example and not limitation, street cut or construction permits; or

(c). any permits or agreements for occupying any other property of the Franchising Authority or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits, or in or on other structures.

2.3 Route.

2.3.1 Without limiting the foregoing, the grant of the Franchise is not an approval of the route that Grantee has indicated it desires to follow in installing its system, and the parties recognize that the final route will be agreed upon and reflected in permits issued. The Grantee is required to propose any routing, pedestal, and vault locations to the City prior to engineering, design, and construction for review and approval.

2.3.2 City also has requested a deviation from the Grantee's original proposed route design in order to achieve community goals and/or benefit public facilities for the City. Grantee agrees that it will construct its system along a route designated by the City for these purposes, so long as the City agrees that it will pay the actual additional engineering and construction costs to the Grantee due to deviations from the original route design (see Attachment A). Grantee will submit a cost estimate for the proposed route, and the City will be given thirty (30) days after the submittal of the cost estimates by the Grantee to consider whether it wishes to pay the costs and have the System re-routed. If the City agrees to reimburse the additional costs, the Grantee will construct along the route, and, upon completion of construction, submit an invoice for the additional costs, along with actual documentation of these costs for reimbursement purposes. The City agrees to pay these costs within sixty (60) days of receipt. This paragraph does not require the City to reimburse Grantee for any costs that may be associated with reconfiguration or rerouting of the System in the course of the process contemplated in Section 2.3.1.

2.4 Term. The term of this Franchise shall be 10 years subject to renewal by the parties and shall be specifically subject to the Provisions of Term (Section 2.5) set forth below. The City will not unreasonably refuse to extend the Franchise for an additional five (5) years if Grantee is in compliance with the terms of this Agreement and applicable law, and the compensation terms are acceptable to both parties.

2.5 Provisions of Term.

2.4.1 If after the effective date of this Franchise, should there be any enactment or promulgation of any State or federal law, regulation or order, or a decision of a court of competent jurisdiction that changes Grantee's or the City's rights or obligations under this Franchise, or that pertains to any of the terms or provisions herein, including, but not limited to, the imposition, payment, collection or treatment of the franchise fees payable hereunder,, then the City and Grantee, by providing written notice to the other party, each shall have the right to request that affected portions of this Franchise be amended or that there be an addendum hereto. The parties shall commence good-faith negotiations within sixty (60) days of such notice and endeavor to conclude such negotiations within ninety (90) days. Any amendment or addendum agreed to by the parties shall become effective upon the passage and acceptance of such amendment or addendum. In the event that an amendment or addendum cannot be agreed upon pursuant to the terms of this section, the City Council may direct termination of this Franchise by the enactment of an ordinance declaring such termination or the Grantee may direct termination of this Franchise by providing the City with thirty (30) days written notice.

2.4.2 Nothing in this section or Franchise constitutes a waiver by the City or the City Council from exercising any rights the City may have to condemn the Grantee's Telecommunications System or otherwise own its own communications system, or place communications facilities within the Right of Way.

2.4.3 The City, in granting this Franchise, surrenders no privileges or rights that it may now have or possess, of owning or installing any communications system and furnishing the same to the City or any Person.

2.4.4 In the event that the City shall at any time hereafter acquire by purchase or otherwise the property of the Grantee in Sheridan, it is agreed that in any proceeding to determine the just compensation due the Grantee or similar valuation required by a court of competent jurisdiction, the value of this Franchise right shall be fixed and determined at the sum of \$1.00 and no more.

2.5 Relation to other provisions of law.

2.5.1 The Franchise issued by the City is subject to, and Grantee must exercise all rights hereby granted to it in accordance with applicable federal, state and local law. References to laws or "applicable laws" in this Franchise include federal, state and local laws (and regulations lawfully adopted pursuant to those laws) now in effect, and, to be amended or lawfully enacted. This Franchise does not confer rights upon the Grantee other than as expressly provided herein, nor pass rights by implication except those that may otherwise vest pursuant to governing law. The Franchise does not convey title, equitable or legal, in the public Right of Way or public property. Grantee shall not subdivide or sublease to any other person any right granted to Grantee herein.

2.5.2 This Franchise and all rights granted under the Franchise are subject to the lawful exercise of the police powers the City now has or may later obtain, including but not limited to the power of eminent domain; and, are further subject to the exercise of the City's rights as property owner under state and federal laws. Except as expressly set forth herein, neither the granting of this Franchise or any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain. The provisions of Articles 4-7 shall be treated as minimum requirements, and shall not bar the City from adopting additional or different standards, and requiring compliance with the same; nor shall any provision of this Franchise bar the City from regulating the time, place or manner in which the Telecommunications System is constructed, repaired, relocated or otherwise physically altered, consistent with City practices and policies. Nothing herein gives the City the authority to regulate the provision of the Services, or shall prevent it from exercising such authority as it has, or may obtain.

2.5.3 This Franchise shall be interpreted to convey rights and interests only as to those Right of Way in which the City has an actual interest and only to the extent and for the purposes set out in the Franchise or available pursuant to governing law. The grant of the Franchise is not a warranty of title or interest in any Right of Way; it does not itself provide the Grantee any interest in any particular location within the Right of Way. The issuance of the Franchise does not deprive the City of any powers, rights, privileges it now has or may later acquire in the future to use, perform work on, construct, operate or repair facilities or systems in, or regulate or control the use of the Right of Way.

2.6 Services Only; Interpretation and conflicts. This Franchise authorizes only the use and occupancy of the Rights of Way for the provision of the Services. This Franchise shall not act as a bar or in any respect prevent the City from imposing lawful conditions related to other activities by Grantee, or prevent the City from requiring additional authorizations, or additional compensation, in connection with the use and occupancy of the Rights of Way for other purposes other than those expressly authorized, whether such use involves the same, or facilities in addition to those used to provide the Services. Without limiting the foregoing, an additional Franchise or other authorization shall be required for use and occupancy of the rights of way to provide cable services or wireless services, or to install facilities for the same. Any additional compensation conditions shall be applied in accordance with state and federal law. This Franchise does not eliminate any obligation of the Grantee to obtain other authorizations as lawfully may be required to provide the Services. Nothing in this Section is intended to expand or contract the City's rights to regulate the provision of services as those rights may exist under governing law, but rather is an exercise of the City's authority to consent to the occupancy and use of the Rights of Way by Grantee.

2.7 Affiliates, subcontractors must comply. Any entity involved in performing work on the Telecommunications System in the City (whether contractors, subcontractors, Affiliates or otherwise) shall comply with the terms and conditions of the Franchise. The Grantee shall be fully liable for any act or omission of the

same that results in a breach of this Franchise as if the act or omission was the Grantee's act or omission.

2.8 Grantee bears own costs. Unless otherwise expressly provided in this Franchise, all acts that the Grantee is required to perform under this Franchise shall be performed at its own expense. Nothing herein shall preclude Grantee from pursuing payment from a third party.

ARTICLE 3 FRANCHISE FEE

3.1 Franchise Fee. Grantee, for and in consideration of the City's granting this Franchise, shall pay to the City for each year the Franchise shall remain in force and effect, an amount equal to the following. Such amount may appear as a line item on the customers' bills. Grantee's obligation to pay over to the City such fees and payments shall continue only so long as Grantee is not prohibited from making such payments by any lawful authority having jurisdiction

3.1.1 Beginning on the effective date of this Franchise and continuing through June 30, 2013 1% of Gross Revenues

3.1.2 Effective July 1, 2013 and continuing through June 30, 2014, 2% of Gross Revenues;

3.1.3 Effective July 1, 2014 and continuing through June 30, 2015, 3% of Gross Revenues;

3.1.4 Effective July 1, 2015 and continuing through the period this Franchise remains in effect, 4% of Gross Revenues 2008.

3.1.5 Notwithstanding the foregoing, the parties recognize that under its franchise with the City, ACT pays a 1% revenues-based franchise fee. If the City grants a franchise to ACT that authorizes ACT to continue to use the rights of way for that fee for any period, Grantee may continue to pay the 1% fee provided for by Section 3.1.1 for the same period.

3.1.6. Notwithstanding the foregoing, while a fee is owed on revenues from the city government of Sheridan, because the amount paid could be passed through on the invoices to the city government, as a matter of convenience the parties agree that (a) the City will not be billed for the franchise fee owed by Grantee; and (b) Grantee need not pay the franchise fee on revenues from the city government.

3.2 Payments. Grantee shall make such payments on a quarterly basis, on or before the 30th day following the close of each quarter, to the Treasurer of the City.

3.3 Not in lieu of other payments. The Franchise issued and the franchise fees paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax. Without limiting the foregoing, the City, among other things, does not waive the obligation of, or the Grantee's requirement to obtain and pay fees associated with all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with codes, ordinances and regulations.

3.4 Franchise Fee to be used for Public Benefit. The fee specified in 3.1 above shall be placed into a special subfund specifically to fund the purchase or improvement of public right-of-ways and spaces (including but not limited to the construction of communications facilities), utility easements, undergrounding of utilities, historic preservation, and pedestrian thoroughfares, which subfund may be the same fund used for fees received from other franchisees. Such subfund shall not be used for general fund expenses including, but not limited to, wages, salaries, benefits and other like expenses.

3.5 Payment Records. The City may, from time to time, and upon reasonable advance written notice, inspect and audit any and all books and records to determine whether Gross Revenues and franchise fees have been accurately computed and paid. In addition to paying all fees owed plus interest, in the event that the City reviews the Grantee's franchise fee payments, and finds that the Grantee has underpaid the fee owed for any year in an amount exceeding 10% of the franchise fees actually paid, the Grantee agrees to pay the reasonable cost of the City's review. Grantee shall pay interest on amounts paid after the due date at the prime rate as listed in the Wall Street Journal on the date the payment was due, compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

3.6 No accord and satisfaction. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance or any other obligation of the Grantee.

3.7 Payment on termination. If this Franchise terminates for any reason, the Grantee shall file with the City, within ninety 90 calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year.

ARTICLE 4 EMERGENCY RESPONSE

4.1 Required Response. The Grantee shall use due diligence in providing a timely response to and, as necessary, securing a site, with regard to an isolated emergency, including without limitation, situations such as a line down, a pole hit or a fire, notwithstanding other emergencies of greater priority.

4.2 Response to City Dispatcher. The Grantee shall make all reasonable efforts to provide a verbal response within two (2) hours to the City dispatcher in response to calls initiated by the City dispatcher in the event of an isolated emergency. The purpose and intent of the verbal response is to communicate the estimated time of arrival of the Grantee and to acknowledge action by the Grantee to the isolated emergency. Once the Grantee's Call Center has acknowledged the City Dispatcher's call with a live person, a second call back is unnecessary. The Grantee shall make every effort to promptly have Grantee work crews available to respond to and repair isolated emergencies that occur in the Sheridan area. Nothing herein shall prevent the City from moving, removing or disconnecting Grantee's facilities in the event of an emergency as the City deems necessary to prevent harm to the public or to property; it is specifically not required to wait for Grantee's response.

ARTICLE 5 MINIMUM CONDITIONS OF USE

5.1 City use of Telecommunications System. To the extent that space is available, the City shall have the right to install and maintain free of charge upon any poles or in any conduit owned by the Grantee any wire and pole fixture that does not unreasonably interfere with Grantee operations when such use is not in conflict with federal or state health or safety requirements. The Grantee shall not be responsible for any liability that may arise by reason of the City's use. If the Grantee changes, removes or alters any of its facilities, the City shall alter, remove or relocate its installations at its own expense upon the request of the Grantee. Any attachment to the Grantee's System must meet NESC regulations pertaining to clearance and other mechanical requirements. Any changes that would have to be made by the City or the Grantee to accommodate the City's use of the Telecommunications System would have to be at the sole expense of the City. The City shall not use any right under this paragraph to provide Services for anyone else with or without charge. Nor can the City use sell or lease any right under this paragraph to third parties.

5.2 Estimate of Gross Revenue. To facilitate the City's budget process, on or before the 1st day of March and each March thereafter during the term of this Franchise, Grantee will provide the City, upon the City's request, an estimate of the Gross Revenue and resultant franchise fee for the following calendar year.

5.3 All work subject to City laws and regulations.

5.3.1 The maintenance, construction, operation, repair and relocation, and all other work performed on the Telecommunications System shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies and practices of the City, not in conflict with federal or state law, affecting such system, as such laws, ordinances, resolutions, rules, regulations, policies and practices may change from time to time. By way of example, and not limitation, this includes laws addressing street cuts, pavement restoration, traffic control, permit fees and any and all other directives governing fees, the time, place and manner in which facilities may be installed.

5.3.2 City may remove, or require removal of, any part of the System that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights of Way through joint trenching and other arrangements.

5.3.3. Grantee shall perform all work in the Rights of Way, on or near public property, or on or near private property in accordance with good engineering practices and in such a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Telecommunication System shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights of Way by, or under, the City's authority. The Grantee's Telecommunication System shall be located, constructed, and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the Franchising Authority may deem proper, to make or to unnecessarily hinder or obstruct the free use of the Rights of Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic. In the event of interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances at Grantee's expense.

5.4 Permits. Construction, operation or repair of the Telecommunications System shall not commence until all required permits have been obtained and all required permit fees have been paid, except in emergency situations which shall be handled in accordance with the policies of the City.

5.5 Maps. Grantee shall file maps and/or drawings with the City, in a form reasonably prescribed by the City, including electronic formats that can be imported into the City's GIS system. Maps initially shall be filed on January 5, 2013. The maps shall be updated at least annually, or upon completion of any significant additions to Grantee's facilities in the City. The maps shall show:

5.5.1 the location of the Telecommunications System.

5.5.2. information as to the facilities Grantee has placed in the City (fiber counts, routes, and so on), which information, if confidential, shall be maintained as confidential as permitted under Wyoming state law.

5.6 Clean up and restoration. If Grantee disturbs the surface of any Right of Way, or otherwise damages or disturbs any private property or public property, Grantee shall, at its own expense, promptly restore the same to at least its prior condition, to the City's satisfaction, and as may otherwise be required by City law, ordinance, resolution, regulation or practice, unless the City and the Grantee agree otherwise. If the Grantee fails to restore the affected property as required herein, then

following written notice to the Grantee, and reasonable opportunity to cure, the City may make the restoration in a manner satisfactory to the City, and all costs incurred for such restoration shall be paid by the Grantee. Provided that, where any work presents an immediate hazard to public health or safety, the City may, without notice, remove the hazard, and all costs incurred by City shall be paid by Grantee.

5.7 ADA. Grantee shall ensure its Telecommunications System are located and constructed in a manner consistent with any requirements of the Americans with Disabilities Act (ADA) applicable at the time of construction. Following notice by the City of an ADA construction problem, the Grantee shall have thirty (30) days or other reasonable time to remedy the problem as agreed to by the City.

5.8 Use of existing poles and conduit. Grantee shall use existing poles and conduit wherever possible. No new poles shall be placed in the Right of Way without written permission of the City. If a written response from the City, either granting or denying the Grantee's request, is not received within ten (10) days of the Grantee's request for such placement, the placement request shall be deemed granted.

5.9 Publicizing construction work. The Grantee agrees to utilize its best efforts to notify all of the affected landowners and the City of the initial build or any substantial rebuild or upgrade of the Telecommunications System in each affected neighborhood.

5.10 Field markings. Any spot or field marking required by the City of any portion of the System shall be accomplished within 10 calendar days of the City's request at no cost to the City. In no event shall the City be responsible for costs or damages associated with the Grantee's failure to timely identify such facilities or any incorrectly identified or located facilities.

5.11 Moving structures. Grantee shall move its wires or other facilities to permit the moving of any structure as may be requested by the City, or authorized by permit of the City, at no cost to the City.

5.12 Review of City project plans. Upon submittal by the City of City or other construction plans for City projects, the Grantee shall review such plans and identify locations of Grantee wires and facilities at the earliest possible moment. In no event shall the City be responsible for any damage to any such wires or facilities in the event the Grantee improperly or otherwise fails to identify such wires and facilities that may be cut or damaged by the City or any other person; provided, however, that nothing herein relieves the City from liability that it may have under Wyoming law, if any, for failure to comply with Wyoming One-Call laws.

5.13 Utility Coordinating Committee. The City may take action to create a utility coordinating committee with representatives from all other utilities, franchise holders, telecommunication companies within the right of Way. If such a committee is formed, the Grantee agrees to participate with a local utility coordinating committee.

5.14 Compliance with Environmental Laws. The Grantee shall comply with all applicable environmental laws in the operation and maintenance of its Telecommunications System.

5.15 One-Call. Grantee shall maintain membership in the one call utility locate system utilized by the City and abide by its bylaws, rules, and regulations.

5.16 Construction in conjunction with City. Upon the City's request, the Grantee shall either:

5.16.1 install, where feasible, additional conduit, lashing, and fibers ("City Facilities") for the City. These City Facilities will be the property of the City and the City shall be solely responsible for the maintenance of the City Facilities; Grantee shall have no interest in or rights with respect to those facilities; or

5.16.2. dedicate fiber in its Telecommunications System to City use, which fiber shall remain Grantee's property, but shall be subject to an Irrevocable Right of Use by the City.

5.16.3 City Facilities shall be installed by the Grantee as provided in Section 5.16.1, or fiber dedicated as provided in Section 5.16.2, as provided by separate agreement between the parties. Notwithstanding any other provision of this franchise, the rights provided to Grantee hereunder shall not become effective until an agreement implementing sections 5.16.1-5.16.2 is signed by both parties, unless the City confirms in writing that it does not wish to exercise its rights under this section 5.16.

ARTICLE 6 TREE TRIMMING AND REPLACEMENT

6.1 Trimming. Grantee tree trimming in Right of Way, for the purpose of keeping overhead wires safe from possible tree damage, shall be performed by the Grantee in a professional, reasonably aesthetic and acceptable manner, under the guidance of a certified arborist or other professional. The Grantee shall, when possible, avoid tree removal and engage in appropriate trimming and pruning of existing trees in the Right of Way.

6.2 Removal, Replacement. Under the guidance of a certified arborist or other professional, the Grantee may remove trees as necessary for the purpose of keeping overhead wires safe from possible tree damage.

6.3 Cooperation in Planting New Trees. The City agrees to consult with the Grantee in selecting the species and location of future trees planted by the City in or near Grantee's Telecommunications System.

ARTICLE 7 OPERATION AND REPORTING PROVISIONS

7.1 Right to Audit, Inspect and copy. The City shall have the right to inspect and copy books and records related in whole or in part to the construction, operation or repair of the Telecommunications System and reasonably necessary for the City to monitor compliance with the terms of this Franchise or applicable law or reasonably necessary to the exercise of any right or duty of the City under the same. The Grantee is responsible for maintaining control over books and records related in whole or in part to fees required to be paid (whether the fees are received by it or by an Affiliate) or to the construction, operation, or repair of the Telecommunications System. It is responsible for producing these records upon the City's request. The Grantee must produce all records reasonably required to understand Gross Revenues of the Grantee or Affiliates and to compute franchise fees and, produce any and all other records related to compliance with any provision of this Franchise and related law. If the material requested contains confidential material, the Grantee shall mark it as such, and the City agrees that it will treat such material as confidential where it is permitted to do so under state law.

7.2 Production. Books and records requested shall be produced to the City at a time and location in the City designated by the City. However, if the requested books and records are too voluminous or for security reasons cannot be copied and moved, then the Grantee may request that the inspection take place at some other location mutually agreed to by the City and the Grantee, provided that:

7.2.1 The Grantee must make necessary arrangements for copying documents selected by the City after its review; and

7.2.2 The Grantee must pay all travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City) in inspecting those documents or having those documents inspected by its designee.

7.3 Retention of records. The Grantee shall ensure that it is able to provide the City all information required by this Franchise. Records shall be kept for at least six years. Nothing in this section shall be read to require the Grantee to violate any applicable law governing privacy.

ARTICLE 8 TRANSFER AND ASSIGNMENT

8.1 Transfer, assignment or change of control. No transfer or assignment of this Franchise or change in control of the Franchise, Grantee or Telecommunications System (collectively, "Transfers") shall occur unless prior written request is made by the Grantee to the City and the City's prior written consent is obtained, which consent will not be unreasonably withheld. In considering whether a Transfer should be approved, the City may consider matters directly relevant to the enforcement of this Franchise, and to matters within the scope of its authority under state and federal law. The Grantee agrees to submit all information reasonably requested by the City relating to the technical, financial and operational qualifications of any transferee to perform according to the terms of the Franchise. A request for Transfer consent must be submitted at least 60 days in advance of a proposed Transfer, and the City shall act promptly on the request for approval.

8.2 Change of control. A change of control of the Franchise, Grantee or Telecommunications System shall be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than 25% ownership in the Grantee, its Telecommunications System or its direct or indirect parents.

ARTICLE 9 INSURANCE, INDEMNIFICATION

9.1 Insurance. The Grantee agrees to maintain in full force and effect, at its own cost and expense, during the term of this Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Grantee shall provide a certificate of insurance designating the City as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the City.

9.2 Indemnity. The Grantee shall indemnify and hold harmless the City and its officers, employees and officials against and from any and all claims, and all damages, costs and expense to which it or they may be subjected by reason of any acts of negligence of the Grantee, or its agents or servants, in any manner arising out of the construction, maintenance or operation of the Telecommunications System.

ARTICLE 10 RELOCATION, REMOVAL, UNDERGROUND FACILITIES AND EXCAVATION

10.1 Relocation and removal. When and as required by the City for any reason, including, but not limited to, public works projects, public safety, street construction (including, but not limited to, rerouting, improving or widening), street, sidewalk, median or neighborhood rehabilitation or change or establishment of street grade, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove its Telecommunications System; provided however, that Grantee shall not be responsible for relocation costs under the following circumstances:

10.1.1. where by City application, specific monies can be and are obtained from Federal or State resources for relocation costs for Grantee, provided that no City matching funds would be required, the scope of the City project would not be diminished and the City would not be required to spend additional monies; or

10.1.2. where the laws or regulations of the City make a developer responsible for the costs, in which case, the Grantee may seek reimbursement from the developer.

10.2 Underground facilities. When and as required by the City, in furtherance of the health, safety and welfare of the community, including, but not limited to, for any public works project, public safety, street construction, rerouting, improving or widening any street, sidewalk, or median or neighborhood rehabilitation or change or establishment of street grade, Grantee shall, at its own expense, locate or relocate Telecommunications System in the affected area identified by the City underground. Without limiting the foregoing, the Telecommunications System in any new subdivision will be placed underground.

10.3 Undergrounding with electrical facilities. Without limiting the foregoing, wherever the lines of any electrical system are underground, Grantee's facilities will be placed underground. Whenever the distribution lines of an electrical system are placed underground in an area where Grantee has any facilities, the Telecommunications System promptly shall be placed underground, and any poles occupied, vacated.

ARTICLE 11

BREACH; ENFORCEMENT AND REMEDIES; REVOCATION

11.1 Right to revoke; generally. The City Council may revoke this Franchise if it finds that Grantee has committed a material breach of this Franchise or repeatedly failed to comply with this Franchise, has defrauded or attempted to defraud the City or customers, or has attempted to evade the requirements of this Franchise. Before revoking a Franchise, the following must have occurred:

11.1.1 The City must give the Grantee notice of an alleged default in performance (which notice will describe the nature of an alleged violation or breach) and a 30 calendar day opportunity to cure or such additional time as is reasonably necessary (the "cure period"); except that an opportunity to cure is not required where the defect in performance is due to willful misconduct or fraud or attempted fraud, is an adjudicated felony violation of criminal law, or is part of a pattern of violations where the Grantee has already had notice and opportunity to cure. The City may extend the cure period for up to 30 additional days if the Grantee has diligently attempted to correct the alleged default.

11.1.2 Not sooner than 30 calendar days after the City notifies the Grantee of the default (or such longer period as may be required to encompass an extended cure period), the City Council shall hold a public hearing to consider whether the Franchise should be revoked, at which the Grantee and the public will be given an opportunity to be heard. Upon completion of this meeting, the City may revoke the franchise.

11.2 Bankruptcy. This Franchise will terminate automatically by force of law 30 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Grantee, whether in an receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 30 day period if:

11.2.1 Such assignment, receivership or trusteeship has been vacated; or

11.2.2 Such assignee, receiver or trustee has fully complied with the terms and conditions of this Article and the Franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Franchise.

11.3 Foreclosure or Judicial Sale. In the event of a foreclosure or other judicial sale of any of the facilities, equipment or property of the Grantee, the City may revoke the Franchise following a public hearing before the City Council, by serving notice upon

the Grantee and the successful bidder at the sale, in which event the Franchise and all rights and privileges thereunder will be revoked and will terminate 30 calendar days after serving such notice, unless:

11.3.1 City has approved the transfer of the Franchise to the successful bidder; and

11.3.2 The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise.

11.4 Rights upon termination or revocation. If the City revokes the Franchise or the Franchise otherwise terminates, all of Grantee's rights under this Franchise shall immediately cease and be divested. and the City shall have the following rights, in addition to the rights specified in this Franchise or under applicable law:

11.4.1 The City may establish a fee that Grantee must pay for so long as it continues to occupy the Rights of Way, or operate the Telecommunications System; may require Grantee to pay all the City's costs associated with the termination or revocation.

11.4.2 The City may require the Grantee to remove any or all of its Telecommunications System at the Grantee's expense. If the Grantee fails to do so within a reasonable period of time, the City may have the removal done at the Grantee's and/or surety's expense, subject to any right of abandonment that may be provided for under applicable law.

11.4.3 If the Telecommunications System or any part thereof is abandoned by Grantee, the City may require the Grantee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the City's property and the City may keep, sell, assign, or transfer all or part of the assets or otherwise dispose of those assets as it sees fit.

11.5 Application of section.

11.5.1 In no event shall the City exercise its rights under this section if a bona fide, good faith dispute exists between the City and the Grantee.

11.5.2 The rights in this section are in addition to, and not in lieu of, other remedies that may be available to the City.

ARTICLE 12 AMENDMENT AND ADDENDUM

At any time during the term of this Franchise, the City, through its governing body, or the Grantee, may propose an amendment or addendum to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment or addendum desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment.

ARTICLE 13 GENERAL PROVISIONS

13.1 Validity of franchise. Both parties affirm that, as of the date of this agreement, each believes that the terms and conditions herein, are valid and fully enforceable.

13.2 Acceptance. Grantee, within thirty (30) days after the passage and approval of this Franchise or any amendment or addendum hereto shall file in the office of the City Clerk a written statement of acceptance of this Franchise or the amendment or addendum duly signed and acknowledged by the proper officer of Grantee authorized to execute such acceptance. If the Grantee fails to file such written acceptance within the time provided or if the Grantee fails to provide proof of the insurance, or if Grantee fails to obtain and maintain the authorizations required to

provide the Services, the rights hereby conferred upon Grantee shall expire, terminate and be of no further effect.

13.3 No waiver. The failure of the City or Grantee, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

13.4 No recourse against individuals. Without limiting or waiving such immunities as the City or its representatives may have under applicable law, Grantee shall have no monetary recourse whatsoever against the individual City officials, board members, commission members, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Franchise or because of the City's exercise of its authority pursuant to this Franchise or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

13.5 No pledging of City credit. Under no circumstances shall the Grantee have the authority or power to pledge the credit of City or incur any obligation in the name of the City. Grantee shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by the Grantee under this Franchise.

13.6 Venue. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the State District Court of Sheridan County, Wyoming or, where otherwise appropriate, exclusively in United States District Court for the District of Wyoming.

13.7 Force Majeure. The Grantee shall not be deemed in default with provisions of this Franchise where performance was rendered impossible by war or riots, acts or terrorism, civil disturbances, floods or other natural catastrophes beyond the Grantee's control or the unforeseeable unavailability of utility services essential to performance hereunder. The acts or omissions of Affiliates are not beyond the Grantee's control, and the knowledge of Affiliates shall be imputed to the Grantee. The Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, public rights-of-way, public property, or private property.

13.8 Notice. Any notices which may be required under the terms of this Agreement shall be sent to the following addresses, mailed certified mail, return receipt requested, and shall be deemed effective the date it is postmarked. Either party may change the person or address for notices at any time by notifying the other party of the change in writing:

NOTICES TO CITY:

City Clerk
City of Sheridan
55 E. Grinnell Plaza
P.O. Box 848
Sheridan, Wyoming 82801

NOTICES TO GRANTEE

Unite Private Networks LLC
Attn: Legal Department
905 W. 92 Highway, Suite 203
Kearney, MO 64060

13.9 Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

13.10 Time and auditing of essence. The parties agree that the time requirements, auditing, and, maintenance of records requirement are of the essence in this Franchise.

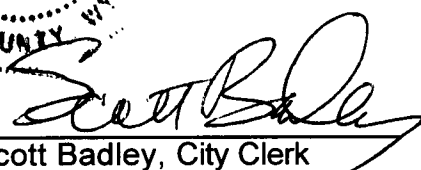
13.11 Captions and Drafting. The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Franchise. The parties to this Franchise agree that such Franchise has been jointly drafted by the City and Grantee.

13.12 Severability. Subject to Section 2.4.1, if any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be illegal, unconstitutional, invalid or unenforceable by a court, agency or legislature of competent jurisdiction, said provision shall be consider separate, distinct, and independent part of this Franchise, and such decision shall not affect the validity of the remaining provisions of this Ordinance. Subject to Section 2.4.1, the City Council hereby declares that it would have passed this Ordinance and each section paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

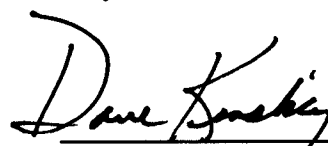
This ordinance shall be in full force and effect immediately upon its passage and publication as by law provided.

PASSED, APPROVED AND ADOPTED this 21st day of May, 2012.




Scott Badley, City Clerk

City of Sheridan


Dave Kinskey, Mayor

Pub: July 21, 2012

ADDENDUM A

AGREEMENT BETWEEN UNITE PRIVATE NETWORKS LLC AND CITY OF SHERIDAN, WYOMING

WHEREAS, Unite Private Networks LLC (hereinafter “UPN” or “Grantee”), a Delaware limited liability company, plans to construct a communications network in the City of Sheridan; and

WHEREAS, the City of Sheridan (hereinafter “City”) desires to take advantage of this construction and install fiber and other facilities which will enhance its communications capabilities; and

WHEREAS, UPN is willing to cooperate with the City to install such facilities.

NOW THEREFORE BOTH PARTIES AGREE AS FOLLOWS:

I. CITY OPTIONS

Sec. 1.1 Option. City may choose to have UPN install fiber for the City (the Ownership Option), or dedicate fiber to the City subject to an irrevocable right of use (the IRU). The IRU shall remain valid for so long as UPN, or any successor or assign of UPN or its facilities, continues to operate within the City of Sheridan.

Sec. 1.2 Exercise. If the City notifies UPN by June 22, 2012 that the City wishes to pursue the Ownership Option, the Ownership Option provisions shall apply; otherwise the IRU provisions shall apply.

II. OWNERSHIP OPTION

Sec. 2.1 The installation of the system. Upon the City’s request, the Grantee shall install additional conduit or innerduct, lashing, and fibers (“City Facilities”) for the City as part of the construction of the System it is being authorized to build pursuant to Ordinance No: 2125, along the route followed by its system.

a. Where feasible in underground areas, and consistent with sound engineering practices, City Facilities will be accessible by the City through the same handholds, vaults and other underground structures through which Grantee’s facilities are accessible; otherwise, Grantee shall install the same in accordance with sound engineering practices.

b. Where Grantees’ system is installed through a private easement, Grantee shall obtain such rights as may be necessary to permit the Grantee to install the City Facilities within the same easement. It is understood that Grantee is not intending to install

its facilities through private easements; this provision applies where Grantee does use private easements and does not override the City's obligations under Sec. 2.3 of the franchise (additional costs incurred to re-route system).

Sec. 2.2 Ownership. These City Facilities will be the property of the City upon acceptance and the City shall be solely responsible for the maintenance of the City Facilities except as otherwise provided herein; UPN shall have no interest in or rights with respect to those facilities. All warranties received by UPN shall be transferred to the City. UPN will assure that the facilities are properly marked so that City Facilities may be easily identified. The City Facilities include fiber and cable sheathing and any bridge attachments, conduit/innerduct installed for the City, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers and other hardware needed or used to fasten or support the City Facilities. In addition, the City is hereby granted such other rights as may be necessary to maintain its facilities in place, as installed by Grantee.

Sec. 2.3. Pricing. UPN will install the City Facilities at incremental cost plus 10%, which incremental cost shall be comprised of:

- (a) the actual cost of the fiber installed for the City;
- (b) the actual additional cost incurred by UPN for installation of the fiber for the City;
- (c) the actual cost of any conduit or innerduct installed for the City;
- (d) the actual additional cost incurred by UPN for the installation of the conduit for the City.

Sec. 2.4. Initial Estimate. By June 4, 2012, UPN will provide City a not-to-exceed estimate of the cost per foot for each of the items indicated in Section 2.3, along with a map showing where it intends to install facilities between the date of this Agreement and June 30, 2013. For purposes of the estimate, UPN should provide a price assuming the City desires six (6) fibers to be installed. It should provide a map showing estimated footage along each route where it intends to install its own facilities.

Sec. 2.5 City Designation. By June 22, 2012 the City shall designate where it wishes have conduit and fiber installed, and the amount of conduit and fiber the City wishes to have installed on its behalf along the routes designated by UPN. The City will also identify any facility to which the City wishes UPN to build fiber, and designate how much fiber should be brought to the facility, where it should terminate and how it should terminate. UPN shall promptly provide the City with a not-to-exceed estimate of each distinct segment of the installation, and shall proceed to perform the work requested by the City, unless the City notifies it to do otherwise within 7 days after the City has requested that UPN commence installation.

Sec. 2.6. City Payment; Acceptance. Upon completion of the construction for the City, UPN shall conduct tests on any fiber installed for the City to show that the fiber performs in accordance with manufacturer specifications, and will promptly perform

whatever work and additional testing is required until the fiber is in place which does perform in accordance with manufacturer specifications. The facilities will also be inspected for compliance with applicable codes and to ensure the facilities are on property the Grantee is entitled to use for installation of the facilities. Any non-compliant portions will be brought into compliance; any improperly located facilities will be properly located. Upon completion of any required testing, and inspection UPN shall submit an invoice to the City for work performed, along with supporting documentation for costs, and proof that the facilities perform in accordance with manufacturer specifications; the results of the physical inspection; and such documents as are necessary, and reasonably satisfactory to the City attorney to provide the City ownership of the facilities, free and clear of any encumbrances. Upon receipt of the invoice, the City will have sixty (60) days to determine whether to accept or, if the City determines that the facilities do not perform properly, or are not installed properly, or title is inadequate, to reject the facilities and require Grantee to correct any deficiencies and resubmit an invoice for acceptance or rejection. The City will be provided access to the facilities to inspect and to perform testing on the facilities, should the City desire to do so. If City accepts the facility, the City must pay any undisputed portion of invoice immediately, and if requested to do so by Grantee shall place the remainder in escrow.

Sec. 2.7. Change orders. City may change or cancel any order for installation of facilities, but may do so only if the City agrees, in the case of a change order, to pay additional costs caused by the change, or in the case of a cancellation, to reimburse Grantee for costs incurred through cancellation.

Sec. 2.8. Maintenance.

(a) Because City facilities will be in close proximity to Grantee facilities, each party agrees to take reasonable steps to apprise the other of activities that may affect the other's property. Grantee will provide City a list of any contractors or subcontractors the Grantee uses for maintenance of its system, and if the City can reasonably do so, the City will attempt to work with a contractor or subcontractor that also works on Grantee facilities. Similarly, where facilities are damaged or must be replaced, City and Grantee will work together to ensure that the facilities of both may be returned to working order promptly.

(b) In the event collocated facilities must be relocated or moved temporarily in order to accommodate work by any third party, or where movement is required by applicable law or Grantee's franchise, Grantee and City shall share the cost on a pro rata basis based on the number of fibers each controls within the facilities that must be moved, and on the same basis shall share any compensation received for movement of the facilities, except where prohibited by law.

Sec. 2.9 Future Extension of Grantee's System. City may require Grantee to install fiber and conduit/innerduct for the City's benefit whenever Grantee extends the system, on the same terms and conditions, and following the same procedures, as is set forth above. Grantee shall notify the in advance of any planned additions to its system, with sufficient time and information to permit the City to determine whether the City wishes to have any facilities installed on its behalf.

Sec. 2.10. Indemnity. Each party agrees to indemnify the other against all losses or costs incurred as a result of a third party claim against the other, where the claim rests on acts or omissions that are solely the responsibility of the indemnifying party.

Sec. 2.11. Remedies. . Neither party shall be liable to the other for consequential damages under this agreement. Otherwise, both parties shall have recourse to any remedy available at law or at equity, In the event Grantee fails to repair a facility, and City does so, City may require Grantee to reimburse it for all costs it incurs. Further, should the City purchase services from Grantee, this paragraph will not apply to the provision of those services and any contemplated remedies will be addressed in the subsequent service order related to those services.

III. IRU OPTION

Sec. 3.1 Limitation. The City cannot sell or lease any right under this Article III to third parties without the express permission of UPN, except as provided below.

Sec. 3.2. Utilization of fibers by the City. The Grantee agrees to provide and clearly identify six (6) independent dark single mode fiber strands (“City Fibers”) for the exclusive use of the City at all times during the term of this agreement or any extension or renewal thereof, without any installation cost to the City. The right granted is an irrevocable right of use. In the event that the City requests a deviation from the Grantee’s original proposed route design in order for the City to utilize the System, the City understands and acknowledges that additional engineering and construction costs to the Grantee due to deviations from the original route design contemplated and put forth by the Grantee will be reimbursed to the Grantee by the City. The Grantee will provide actual documentation of these costs for reimbursement purposes and the City agrees to pay these costs within sixty (60) days of receipt. Grantee understands that the cost of deviations from the route that may be required for other reasons, or through the permitting process will not be reimbursed. Grantee further agrees to plainly label and identify said six (6) fibers dedicated to the use of City and to inform City of the manner of identification. Provided that, where Grantee is only installing fewer than six (6) fibers for a customer, and only installs a bundle of six (6) fibers, only two (2) fibers need to be installed for the City. At the time the City of Sheridan determines to utilize the dedicated fiber and determines the type of service it will need, the City may re-open the terms specific to the response and penalties, and the Grantee will discuss those terms with the City. Re-opening shall not affect the City's right to use the fiber or cause a delay upon the Grantee in installing the fiber and other related facilities under the terms of this Agreement. The applicability of the response and penalty provisions within Section 3.4 of this Agreement shall remain in effect and binding upon both parties until such modifications to Section 3.4 are mutually agreed upon between the City and the Grantee.

Sec. 3.3. Timing. The fiber will be installed and tested to verify compliance with manufacturer’s specifications as Grantee installs fiber for its own purposes.

Sec. 3.4. Repairs and Maintenance of City Fibers. Grantee, at its own cost, shall maintain, and repair the City Fibers so as to assure continuing conformity of the City Fibers

with manufacturer's specifications. City may repair and maintain the City Fibers upon written permission of Grantee, or upon failure of Grantee to promptly maintain or repair the City Fibers on request of City. "Promptly" shall mean that the work will be commenced and pursued with due diligence in accordance with the time periods specified below. Maintenance includes, but is not limited to, replacement. For fiber that is not in use and for which use is not planned: repair must occur at the same time Grantee repairs its own facilities. Otherwise:

Priority Level	Issue Description
P1	Loss of service to City Fiber critical paths (as identified by City).
P2	Material reduction in network performance a Critical Path Site or loss or material reduction in performance at more than two City Sites.
P3	Reduction in network performance to any End Site that does not materially impact use of City Fiber by the affected End User

For P1 outages, repair work must commence within two (2) hours, and City must be updated as to status every two hours. For P2, repair work must commence within four hours, and the City must be updated every four hours. Work must proceed continuously until the problem is resolved. For P3, repair work must commence within two business days, and shall be performed during normal business hours. Time is from notice to Grantee, and is deemed provided for purposes of this Section if City calls Grantee to report the incident to an outage reporting number provided by Grantee. The call shall be confirmed by City by fax or email to Grantee identifying the time of the call. Where onsite work is required, "commence" means a crew with necessary equipment must be onsite within the times specified.

Sec. 3.5. Relocation. Grantee, at its own cost, shall relocate the City Fibers if required to remove or move them for any reason. Provided that, for fibers that the City is actually using, the City shall pay any unreimbursed costs incurred by Grantee in relocating the City fibers in addition to costs that Grantee incurs in relocating the Grantee's own fibers.

Sec. 3.6. Connections to Fiber. Within twenty (20) business days after City so requests, Grantee shall connect/splice the City Fibers to other portions of the City's network as may be required to enable the City Fibers to function and operate as optical fibers within the City network, provided that such access points do not materially interfere with any Grantee's facilities. Connection/splicing shall be performed for actual direct costs attributable to the City plus 10%. Grantee shall invoice City for all connection/splicing expenses. City shall pay within thirty (30) days of receiving such invoice.

Sec. 3.7. Assignment of City Fibers. City may sell, assign or lease "dark fiber" capacity on the City Fibers to other political subdivisions or other governmental entities affiliated with the City, or to non-profit entities performing services with the City. City shall

promptly notify Grantee of any such sales, assignments or leases. City may not sell, assign or lease same to other non-public third parties, or to any public schools or universities within Sheridan without the permission of the Grantee.

Sec 3.8. Lateral Builds for the City. In the event that the City desires laterals to be built to connect additional fibers to the backbone fibers contemplated in Section 3.2, Grantee agrees to handle all installation of these lateral fibers at actual costs plus 15%. If the City does not elect to have Grantee perform such construction, the City understands and acknowledges that the laterals may only be spliced into the existing backbone by the Grantee. The cost for any splicing shall be at actual cost plus 15%. City may also request, and Grantee will tie fibers into appropriate splice boxes at cost plus 15% that the City can access directly.

Sec. 3.9. Legal title of City Fibers. Legal title to the Grantee's facilities including the fiber optic communications system, including fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers and other hardware needed or used to fasten or support the cable shall be held by Grantee. Neither anything contained in this Agreement, nor any use, however extended, of the City Fibers, nor any placement of City's facilities on or in the private network, shall create or vest (or be construed as creating or vesting) in City any right, title or interest in or to any real or personal property owned by Grantee other than the rights contained in this Agreement for the City Fibers. Legal title to all property of the City shall remain with the City, and nothing herein shall be deemed to relinquish City's right, title, interest or control of such property, including public rights of way. Unless otherwise agreed by the parties, the demarcation point between Grantee facilities and City facilities shall be the splice point at which the City connects to the City Fiber.

Sec. 3.10. Purchase Option. City shall have the option to purchase the City Fiber, and all associated facilities and rights required to maintain the facilities in place, at depreciated book value in the event Grantee ceases providing service.

Sec. 3.11. Indemnity. Each party agrees to indemnify the other against all losses or costs incurred as a result of a third party claim against the other, where the claim rests on acts or omissions that are solely the responsibility of the indemnifying party.

Sec. 3.12. Remedies. Neither party shall be liable to the other for consequential damages under this agreement. Otherwise, both parties shall have recourse to any remedy available at law or at equity, In the event Grantee fails to repair a facility, and City does so, City may require Grantee to reimburse it for all costs it incurs. Further, should the City purchase services from Grantee, this paragraph will not apply to the provision of those services and any contemplated remedies will be addressed in the subsequent service order related to those services.

IV. GENERALLY APPLICABLE PROVISIONS

Sec. 4.1 Testing Procedures; Construction Procedures.

(a) This test procedure is designed to ensure that the fiber optic plant meets general industry standards, and is suitable to support connectivity to a range of potential fiber network fiber interface equipment. Testing shall be performed after construction is completed for any discrete run of fibers installed for the City, and at the time the any fiber is spliced to that fiber to complete a connection to an end use location. Each link shall be tested for continuity and to ensure that there are no unacceptable anomalies in the fiber optic cable. An optical time-domain reflectometer (OTDR) shall be used to measure and document splice and connector locations, and an optical power meter test set shall be used to determine end-to-end optical losses and fiber continuity. The parties will cooperate to modify the tests described below as appropriate in light of the final system configuration, as required to accurately test the fiber.

(b) The test shall be successfully completed and shall be reviewed by the City. The test shall be deemed successfully completed if: (1) maximum fiber losses do not exceed 0.5 dB/km at 1310 nm; (2) individual splice losses do not exceed 0.3 dB; and (3) maximum mated connector losses do not exceed 0.75 dB. These standards are based on the Telecommunications Industry Association (TIA) and the Electronic Industries Alliance (EIA) Optical Fiber Cabling Components Standard (EIA/TIA 568-B.3) for outside plant. Testing will be performed by Grantee's personnel or contractors, and may be observed by designated city representatives.

(c) An OTDR shall be used to measure and document splice losses and connector losses. To correctly identify abnormalities at a short range, a 100-meter or longer launch cable shall be used between the OTDR and the fiber under test. Bi-directional traces shall be acquired for each fiber. If the connection of the launch cable to the patch panel requires optimization by the operator, sampling acquisition will commence upon completion of the optimization. Each fiber will be identified, and the results of the test for each fiber will be recorded as indicated below in the section "Test Data File Names." The test will be repeated for each of the fibers linking a particular site. All tests will be made at 1310 nm and 1550 nm.

(d) OTDR Settings

Settings on the OTDR shall reflect the following:

1. The Refractive Index shall be set for the actual fiber utilized (commonly-used Corning SMF-28 single mode fiber has a refractive index of 1.4677 at 1310 nm);
2. Pulse width no greater than 100 ns (10m) for all fiber lengths;
3. Scattering coefficient specified by the fiber manufacturer for each wavelength tested;
4. A minimum of 10,000 sampling acquisitions (averages);
5. Maximum range set to no more than 10 km for all fiber length less than 10 km;
6. Maximum range set to no more than 25 km for fiber lengths greater than 10 km; and
7. Event threshold: 0.05 dB.

(e) Test Documentation.

Installed optical fiber OTDR test documentation shall include:

1. Total fiber length;
2. Individual fiber traces for complete fiber length;
3. CD/DVD records of all traces;
4. Losses of individual splices and connectors;
5. Losses of other anomalies;

6. Wavelength tested and measurement directions;
7. Manufacturer, model and serial number of the test equipment; and
8. Name, signature, and company of the engineer performing the tests.
9. All data collected during the tests shall be recorded at the time of the tests using electronic means.

(e) Optical Power Meter Test Procedure

When a connection is completed to an end use location, Optical power meter measurements shall be made at the same time as the OTDR tests to determine overall fiber loss and to ensure that fibers have appropriate end-to-end continuity (properly labeled). Power meter testing shall be performed at both 1310 nm and 1550 nm and shall report the loss of each fiber strand within the cable run.

(f) As part of the construction and subsequent physical inspection of the system, Grantee shall ensure that storage loops are placed appropriately in relationship to the location of City facilities.

Sec. 4.2 Injunctive Relief. The parties agree that the failure of the other to comply with the provisions hereof are not fully remediable by damages, and that without limiting the relief otherwise available at law and equity injunctive relief is appropriate to secure the following:

(a) For Grantee:

- to prevent City from improperly subleasing or assigning rights under Article III;
- to prevent the City from improperly maintaining or splicing into the City Fibers

(b) For City:

- where Grantee fails to provide the facilities required under Article II or III; or
- where Grantee refuses to provide access required to maintain, repair or replace the facilities provided under Article II, or where the City is permitted to maintain and repair facilities as provided in Art. III.

- to secure the purchase option.

Sec. 4.3 Notices.

(a) Grantee has provided City with emergency telephone numbers, attached hereto, that can be used at any time to reach a person authorized to receive notice under this agreement in the event of an outage.

(b) Within five (5) days of signing, each party will provide the other

- the name, address, and email of the person who will be primarily responsible for working with the other party on issues related to the installation of the facilities

contemplated by this agreement.

- - the name, address, and email of the person who will be primarily responsible for working with the other party on issues related to the ongoing operation and maintenance of the facilities contemplated by this agreement (for Art. III, that would include the person who should receive outage notices).

- the name, address, and email of the person where notices of breach may be sent.

Sec. 4.4 Governing Law. This addendum is governed by the law of Wyoming, and disputes regarding this agreement shall be heard in a state or federal court of appropriate jurisdiction in the state of Wyoming.

Sec. 4.5 Counterparts. This Agreement may be signed in counterpart and all counterparts together constitute one document.

AGREED:

On Behalf of the City of Sheridan, Wyoming:



DATED:

On Behalf of the Unite Private Networks LLC:



DATED: 07/31/2012

ATTACHMENT:
NUMBERS THAT CAN BE CALLED FOR REPORTING OUTAGES

Wyoming - UNITE PRIVATE NETWORKS, LLC.		
Twenty-four hours/seven days a week 1-866-963-4237		
Name	Email	Cell #
Beal, Allen	<u>allen.beal@upnllc.com</u>	719-225-0761
Simoneau, Jerome	<u>jerome.simoneau@upnllc.com</u>	816-365-9435
Shucard, Kevin	<u>kevin.shucard@upnllc.com</u>	303-895-1480
Treanor, Becky	<u>rebecca.treanor@upnllc.com</u>	719-225-5854
Aude, Walter	<u>walter.aude@upnllc.com</u>	402-314-6787
Swayne, Don	<u>don.swayne@upnllc.com</u>	303--901-2976
Capuano, Jim	<u>jim.capuano@upnllc.com</u>	816-500-9935
Reckrodt, Ron	<u>ron.reckrodt@upnllc.com</u>	816-260-2464
Anderson, Kevin	<u>kevin.anderson@upnllc.com</u>	816-260-1868

51064.00002\7471332.6



CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801

Ph (307) 674-6483 Fax (307) 674-2195

Utilities

MEMORANDUM

RE: Discussion of Resolution 40-24; Authorizing Assignment of UPN Franchise to Northwest Fiber Management, LLC (dba Ziply Fiber) - Utilities Director Dan Roberts

From: Dan Roberts, Utilities Director

To: City Council

CC: City Administrator Stuart McRae

Date: 10/09/2024

Recommendation:

Staff recommends that the Mayor and City Council approve Resolution 40-24; Authorizing the assignment of the UPN, LLC Franchise Agreement to Northwest Fiber Management (DBA Ziply Fiber) ("Ziply")

Background:

The City of Sheridan (City) and Unite Private Networks (UPN) entered into a Franchise Agreement (Agreement) on May 21, 2012. This agreement has been in effect since with an initial term of ten (10) years, subject to renewal by the parties. On October 21, 2024 the City Council will consider Resolution 38-24 which will effectively authorize an extension of the UPN, LLC Franchise Agreement through May 21, 2027.

Discussion:

If Resolution 38-24 is approved by the City Council, then UPN, LLC requests the assignment of their Franchise to Ziply (UPN Request Attached). Ziply intends to own and operate the Franchise in the exact same manner as UPN, LLC.

Prepared for the City Council's consideration is Resolution 40-24 effectively authorizing the assignment requested above.

Attachments

Franchise Agreement Transfer Consent
Resolution 40-24



October 8, 2024

Dan Roberts
Utilities Director
City of Sheridan
55 E. Grinnell Plaza
Sheridan, WY 82801
droberts@sheridanwy.gov

Brad Thimmesch
City Attorney
Yonkee & Toner, LLP
319 W. Dow St.
Sheridan, WY 82801
bthimmesch@yonkeetoner.com

Re: Communications Franchise Agreement, dated May 21, 2012, by and between the City of Sheridan, Wyoming and Unite Private Networks, LLC (the “**Agreement**”)

To Whom It May Concern:

Please be aware Unite Private Networks, LLC (“UPN,” “we,” or “our”) has entered into an agreement to sell certain of its assets to Northwest Fiber, LLC dba Ziplly Fiber, which will then be contributed to Northwest Fiber Management, LLC (“**Assignee**”), effective on, and subject to, the closing (the “**Closing**”) of the transactions contemplated under that certain Asset Purchase Agreement, dated August 23, 2024, between UPN and Assignee, among other parties. Pursuant to the Agreement, Assignee is acquiring substantially all of the assets and customers of UPN in Sheridan, WY (the “**Transaction**”).

Following the Closing, Assignee will continue to provide the same services, subject to the same terms and conditions, that customers currently receive from UPN. Accordingly, UPN desires to assign its rights and delegate its obligations under the Agreement to Assignee, effective upon Closing. In accordance with Section 8.1 of the Agreement, we hereby request your consent to such assignment (the “**Assignment**”). Upon Closing, Assignee shall assume all of UPN’s rights and obligations under the Agreement that arise or accrue after Closing; UPN will remain responsible for obligations under the Agreement that arise or accrue on or prior to Closing.

Please sign this letter where indicated below to acknowledge your consent to the Assignment. Correspondence regarding the Transaction and this request may be directed to UPN and Assignee at the following addresses:

For UPN:

Charlene White
Vice President, Network Facilities
Unite Private Networks, LLC
120 West 12th Street
11th Floor
Kansas City, MO 64105
816.591.5095
charlene.white@upnfiber.com

For Assignee:

Byron Springer
General Counsel
Northwest Fiber Management, LLC
c/o Ziplly Fiber
135 Lake Street South, Suite 1000
Kirkland, WA 98033
425.250.8155 x107
byron@ziply.com

Following the Transaction, notices under the Agreement may be directed to Assignee at the same address. We appreciate your prompt consideration of this request, which will ensure the seamless transition of services.

Respectfully submitted,

Signed by:



78AF40EC4667481...

Charlene White
Vice President, Network Facilities
Unite Private Networks, LLC

Signed by:



38BF275171704AC...

Byron Springer
General Counsel
Northwest Fiber, LLC

The undersigned, as of the date set forth below, hereby consents to the Assignment and agrees to sign other documents, instruments, certificates, and agreements, and take other actions reasonably necessary to effect the Assignment:

City of Sheridan

By: _____

Name:

Title:

Date:

**CITY OF SHERIDAN
RESOLUTION 40-24**

A RESOLUTION GRANTING THE TRANSFER OF THE UNITE PRIVATE NETWORKS, LLC (“UPN”) FRANCHISE TO NORTHWEST FIBER MANAGEMENT, LLC DBA ZIPLY FIBER (“ZIPLY”), ALLOWING ZIPLY TO OPERATE AND MAINTAIN A COMMUNICATIONS SYSTEM IN SHERIDAN, WYOMING (“CITY” OR “THE CITY”).

WHEREAS, under Wyoming Statute §15-1-103(a)(xxxiii), a city may grant franchises for such terms as the governing body deems proper to any utility company, provided no franchise may be entered into with any person in which that person is given an exclusive right for any purpose whatsoever;

WHEREAS, Communications Franchise Ordinance No. 2125 (the “Franchise”) granted a nonexclusive franchise to operate a communications system within the City;

WHEREAS, Resolution 38-24 authorized the Franchise to be renewed and extended for five (5) years making the Franchise valid until May 21, 2027;

WHEREAS, UPN desires to transfer and assign their rights and obligations under the Franchise to Zippy; and

WHEREAS, the Article 8, Paragraph 8.1 of the Franchise requires the City’s written consent to allow UPN to transfer and assign their rights and obligations under the Franchise.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERIDAN HEREBY ESTABLISH:

The City approves and consents to the transfer and assignment of UPN’s rights and obligations under the Franchise to Zippy, binding Zippy to the same terms and conditions as established in the Franchise while granting Zippy the nonexclusive right to operate and maintain a communications system within the City.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2024.

City of Sheridan

Rich Bridger, Mayor

ATTEST:

Candice Ainsle, Interim City Clerk



CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801

Ph (307) 674-6483 Fax (307) 674-2195

Clerk

MEMORANDUM

RE: Discussion of Ownership Member Transfer of Retail Liquor License #9 - Wyoming Downs OTB4, LLC -
Interim City Clerk Candace Ainslie

From: Candace Ainslie, Deputy Clerk

To: City Council

CC:

Date:

Discussion:

See attached update of LLC Owner Membership form.

Attachments

Update Form

WLD-CORP & LLC INFORMATION UPDATE FORM (WLD-3/2024)

Date:	10/02/24
Liquor Licensing Authority Name:	City of Sheridan
License Holder Name:	Wyoming Downs OTB4, LLC
Doing Business As (DBA)/Trade Name:	Wyoming Downs
Location City:	Sheridan
License Holder Contact Person Name:	Wyoming Downs OTB4, LLC
Contact Person Phone or Email:	Traci Lacock

(1/25)

14. Applicant is Filing As a Corporation, Limited Company, Limited Liability Company, Limited Liability Partnership or Limited Partnership: W.S. 12-4-102(a)(iv) & (v)

Each stockholder holding, either jointly or severally, ten percent (10%) or more of the outstanding and issued capital stock or ownership of the corporation, limited liability company, limited liability partnership, or limited partnership.

Each Officer, Director or LLC member must complete all of the information below.

(If more information is required, list on a separate piece of paper and attach to this application)

True and Correct Name	Date of Birth	Residence Address No. & Street City, State & Zip <i>DO NOT LIST PO BOXES</i>	Residence Phone Number	No. of Years in Corp or LLC	% of Corporate Stock or Ownership Held	Have you been convicted within the previous 10 years of:	
						a Felony Violation Relating to Alcoholic Liquor or Malt Beverages?	any Violation Relating to Alcoholic Liquor or Malt Beverages?
Ron Winchell	3/29/1972	42 Soaring Bird Ct. Las Vegas, NV 89135	702-402-3670	<1 yr.	100	YES ☐ NO ☒	YES ☐ NO ☒
						YES ☐ NO ☐	YES ☐ NO ☐
						YES ☐ NO ☐	YES ☐ NO ☐
						YES ☐ NO ☐	YES ☐ NO ☐
						YES ☐ NO ☐	YES ☐ NO ☐

REQUIRED ATTACHMENTS:

- ☐ A statement indicating the financial condition and financial stability of the Applicant. W.S. 12-4-102(a)(vi).
- ☒ If transferring a license or permit to another Applicant, attach a form of assignment from the current licensee to the new Applicant authorizing the transfer. W.S. 12-4-601(b).
- ☐ A copy of any lease agreements. W.S. 12-4-103(a)(iii)
- ☐ Bar & Grill and Restaurant liquor license Applicants: attach a copy of the current Food Service Permit or the approved permit application for the Applicant and for the licensed building location. 12-4-413(a) / W.S. 12-4-407(a)
- ☐ If food and beverage services will be contracted or subcontracted attach a copy of the contract or lease agreement W.S. 12-4-201(m) / W.S. 12-4-301(e) / W.S. 12-4-403(b)
- ☐ If filing for a Golf Club or Social Club liquor license attach a copy of the club's bylaws W.S. 12-4-301(c)

OATH OR VERIFICATION

Requires signatures by ALL Individuals, ALL Partners, ONE (1) LLC Member, or TWO (2) Corporate Officers or Directors except that if all the stock of the corporation is owned by ONE (1) individual then that individual may sign and verify the application upon his oath, or TWO (2) Club Officers. W.S. 12-4-102(b)

Under penalty of perjury, and the possible revocation or cancellation of the license, I swear the above stated facts, are true and accurate.

Nevada

STATE OF ~~MISSISSIPPI~~)

) SS.

COUNTY OF Clark)

Signed and sworn to before me on this 19th day of September, 2024 that the facts alleged in the foregoing instrument are true by the following:

1) _____ (Signature)	<u>Ron Winchell</u> (Printed Name)	<u>Manager</u> Title
2) _____ (Signature)	_____ (Printed Name)	_____ Title
3) _____ (Signature)	_____ (Printed Name)	_____ Title
4) _____ (Signature)	_____ (Printed Name)	_____ Title
5) _____ (Signature)	_____ (Printed Name)	_____ Title

Witness my hand and official seal:



Iliana Godoy
Signature of Notary Public

My commission expires: 8/16/2026

NEW OR TRANSFER LIQUOR LICENSE OR PERMIT APPLICATION

FOR LIQUOR DIVISION USE ONLY		
Customer #:		
Trf from:		
Reviewer:	Initials	Date
Agent:		/ /
Chief:		/ /

To be completed by City/County Clerk

License Fees	Annual Fee: \$	Local License #: 9	Date filed with clerk: 9 / 14 / 2023
	Prorated Fee: \$	Advertising Dates: (2 Weeks)	9/20/2023 & 9/27/2023
	Transfer Fee: \$ 100	Hearing Date: 10 / 02 / 2023	
	Publishing Fee: \$ 90		
Publishing Fee Direct Billed to Applicant: ☒			
License Term:	10 / 03 / 2023	Through	12 / 31 / 2023
	Month Day Year		Month Day Year

LICENSING AUTHORITY: Begin publishing promptly. As W.S. 12-4-104(d) specifies: NO LICENSING AUTHORITY SHALL APPROVE OR DENY THE APPLICATION UNTIL THE LIQUOR DIVISION HAS CERTIFIED THE APPLICATION IS COMPLETE.

Applicant:	Wyoming Downs OTB4, LLC		
Trade/Business Name (dba):	Wyoming Downs		
Building to be licensed/Building Address:	927 Coffeen Avenue		
	Number & Street		
	Sheridan	WY	82801 Sheridan
	City	State	Zip County
Local Mailing Address:	2905 Lake East Drive, Suite 150		
	Number & Street or P.O. Box		
	Las Vegas, NV 89117		
	City	State	Zip
Local Business Telephone Number:	(307)259-1480	Fax Number:	()
Business E-Mail Address:	tlacock@wydowns.com		

FILING FOR

- ☐ NEW LICENSE
- ☐ TRANSFER OF LOCATION

FILING IN (CHOOSE ONLY ONE)

- ☒ CITY OF: Sheridan
- ☐ COUNTY OF:

FILING AS (CHOOSE ONLY ONE)

- ☐ INDIVIDUAL
- ☐ PARTNERSHIP
- ☐ LP/LLP
- ☒ LLC
- ☐ CORPORATION
- ☐ LTD PARTNERSHIP
- ☐ ORGANIZATION
- ☐ OTHER

- ☒ TRANSFER OWNERSHIP
- ☐ ASSIGNMENT LETTER ATTACHED
- FORMERLY HELD BY: Ole's Pizza and Spaghetti House, Inc.

TYPE OF LICENSE OR PERMIT (CHOOSE ONLY ONE)

RETAIL LIQUOR LICENSE

- ☒ ON-PREMISE ONLY (BAR)
- ☐ OFF-PREMISE ONLY (PACKAGE STORE)
- ☐ COMBINATION ON/OFF PREMISE (BOTH BAR & PACKAGE STORE)

- ☐ RESTAURANT LIQUOR LICENSE
- ☐ RESORT LIQUOR LICENSE
- ☐ BAR AND GRILL

LIMITED RETAIL (CLUB)

- ☐ VETERANS CLUB
- ☐ FRATERNAL CLUB
- ☐ GOLF CLUB
- ☐ SOCIAL CLUB

- ☐ MICROBREWERY
- ☐ WINERY
- ☐ DISTILLERY SATELLITE
- ☐ WINERY SATELLITE
- ☐ COUNTY RETAIL/SPECIAL MALT BEVERAGE PERMIT

SPECIAL DESIGNATIONS

- ☐ CONVENTION FACILITY
- ☐ CIVIC CENTER/EVENT CENTER/ PUBLIC AUDITORIUM
- ☐ GOLF CLUB
- ☐ GUEST RANCH
- ☐ RESORT

To Assist the Liquor Division with scheduling inspections: OPERATIONAL STATUS

- ☒ FULL TIME (e.g. Jan through Dec) (specify months of operation) from Jan to Dec
- ☐ SEASONAL/PART-TIME DAYS OF WEEK (e.g. Mon through Sat) from Mon to Sun
- ☐ NON-OPERATIONAL/PARKED HOURS OF OPERATION (e.g. 10a - 2a) from 10 a.m. to 2 a.m.

ALL APPLICANTS MUST COMPLETE QUESTIONS 1- 4

1. **BUILDING OWNERSHIP:** Does the applicant? W.S. 12-4-103(a)(iii)
(a) **OWN** the licensed building? ☒ YES (own)
(b) **LEASE** the licensed building? (Lease must be through the term of the liquor license) ☐ YES (lease)
If Yes, please submit a copy of the lease and indicate:
(i) When the lease expires, located on page _____ paragraph _____ of lease.
(ii) Where the **Sales** provision for alcoholic or malt beverages is located, on page _____ paragraph _____ of lease.
(MUST contain a provision for SALE OF ALCOHOLIC or MALT BEVERAGES.)
2. To operate your liquor business, have you assigned, leased, transferred or contracted with any other person (entity) to operate and assert total or partial control of the license and the licensed building? W.S. 12-4-601(b) ☐ YES ☒ NO
3. Does any manufacturer, brewer, rectifier, wholesaler, or through a subsidiary affiliate, officer, director or member of any such firm: W.S. 12-5-401, 12-5-402, 12-5-403
(a) Hold any interest in the license applied for? ☐ YES ☒ NO
(b) Furnish by way of loan or any other money or financial assistance for purposes hereof in your business? ☐ YES ☒ NO
(c) Furnish, give, rent or loan any equipment, fixtures, interior decorations or signs other than standard brewery or manufacturer's signs? ☐ YES ☒ NO
(d) If you answered **YES** to any of the above, explain fully and submit any documents in connection there within:

4. Does the **applicant** have any interest or intent to acquire an interest in any other liquor license issued by **this** licensing authority? W.S. 12-4-103(b) ☐ YES ☒ NO
If "YES", explain: _____

5. **BAR AND GRILL LICENSE OR RESTAURANT LICENSE:**
Have you submitted a valid food service permit or application? W.S. 12-4-413(a) ☐ YES ☐ NO

6. **RESORT LICENSE:**
Does the resort complex:
(a) Have an actual valuation of at least one million dollars, or have you committed or expended at least one million dollars (\$1,000,000.00) on the complex, excluding the value of the land? W.S. 12-4-401(b)(i) ☐ YES ☐ NO
(b) Include a restaurant and a convention facility which will seat at least one hundred (100) persons? W.S. 12-4-401(b)(ii) ☐ YES ☐ NO
(c) Include motel, hotel or privately owned condominium, town house or home accommodations approved for short term occupancy with at least one hundred (100) sleeping rooms? W.S. 12-4-401(b)(iii) ☐ YES ☐ NO
(d) If no on question (c), have a ski resort facility open to the general public in which you have committed or expended not less than 10 million dollars (\$10,000,000.00)? W.S. 12-4-401(b)(iv) ☐ YES ☐ NO
(e) Are you contracting/leasing the food and beverage services? W.S. 12-4-403(b)
1. If Yes, have you submitted a copy of the food and beverage contract/lease? ☐ YES ☐ NO

7. **MICROBREWERY LICENSE:**
Will the license be held in conjunction with another liquor license? W.S. 12-4-412(b)(iii) ☐ YES ☐ NO
(a) If "YES", please specify type: ☐ RETAIL ☐ RESTAURANT ☐ RESORT
☐ BAR AND GRILL ☐ WINERY
(b) Do you self distribute your products? W.S. 12-2-201(a) ☐ YES ☐ NO
(Requires wholesale malt beverage license with the Liquor Division)

8. **WINERY LICENSE:**
Will the license be held in conjunction with another liquor license? W.S. 12-4-412(b)(iii) ☐ YES ☐ NO
(a) If "YES", please specify type: ☐ RETAIL ☐ RESTAURANT ☐ RESORT
☐ BAR AND GRILL ☐ MICROBREWERY

0000

9. LIMITED RETAIL (CLUB) LICENSE:

FRATERNAL CLUBS W.S. 12-1-101(a)(iii)(B)

- (a) Has the fraternal organization been actively operating in at least thirty-six (36) states? ☐ YES ☐ NO
- (b) Has the fraternal organization been actively in existence for at least twenty (20) years? ☐ YES ☐ NO

10. LIMITED RETAIL (CLUB) LICENSE:

VETERANS CLUBS W.S. 12-1-101(a)(iii)(A):

- (a) Does the Veteran's organization hold a charter by the Congress of the United States? ☐ YES ☐ NO
- (b) Is the membership of the Veteran's organization comprised only of Veterans and its duly organized auxiliary? ☐ YES ☐ NO

11. LIMITED RETAIL (CLUB) LICENSE:

GOLF CLUBS W.S. 12-1-101(a)(iii)(D)/W.S. 12-4-301(e):

- (a) Do you have more than fifty (50) bona fide members? ☐ YES ☐ NO
- (b) Do you own, maintain, or operate a bona fide golf course together with clubhouse? ☐ YES ☐ NO
- (c) Are you a political subdivision of the state that owns, maintains, or operates a golf course? ☐ YES ☐ NO
1. Are you contracting/leasing the food and beverage services? W.S. 12-5-201(g) ☐ YES ☐ NO
2. If Yes, have you submitted a copy of the food and beverage contract/lease? ☐ YES ☐ NO

12. LIMITED RETAIL (CLUB) LICENSE:

SOCIAL CLUBS W.S. 12-1-101(a)(iii)(E)/W.S. 12-4-301(b):

- (a) Do you have more than one hundred (100) bona fide members who are residents of the county in which the club is located? ☐ YES ☐ NO
- (b) Is the club incorporated and operating solely as a nonprofit organization under the laws of this state? ☐ YES ☐ NO
- (c) Is the club qualified as a tax exempt organization under the Internal Revenue Service? ☐ YES ☐ NO
- (d) Has the club been in continuous operation for a period of not less than one (1) year? ☐ YES ☐ NO
- (e) Has the club received twenty-five dollars (\$25.00) from each bona fide member as Recorded by the secretary of the club and are club members at the time of this application in good standing by having paid at least one (1) full year in dues? ☐ YES ☐ NO
- (f) Does the club hold quarterly meetings and have an actively engaged membership carrying out the objectives of the club? ☐ YES ☐ NO
- (g) Have you filed a true copy of your bylaws with this application? ☐ YES ☐ NO
- (h) Has at least fifty one percent (51%) of the membership signed a petition indicating a desire to secure a Limited Retail Liquor License? (Petition Attached) ☐ YES ☐ NO

13. If applicant is filing as an Individual, Partnership or Club: W.S. 12-4-102(a)(ii) & (iii)

Each individual, partner or club officer must complete the box below.

True and Correct Name	Date of Birth	Residence Address No. & Street City, State & Zip <i>DO NOT LIST PO BOXES</i>	Residence Phone Number	Have you been a DOMICILED resident for at least 1 year and not claimed residence in any other state in the last year?	Have you been Convicted of a Felony Violation?	Have you been Convicted of a Violation Relating to Alcoholic Liquor or Malt Beverages?
				YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
				YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
				YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
				YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
				YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
				YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐

(If more information is required, list on a separate piece of paper and attach to this application.)

14. If the applicant is a **Corporation, Limited Liability Company, Limited Liability Partnership or Limited Partnership:** W.S. 12-4-102(a)(iv) & (v)

Each stockholder holding, either jointly or severally, ten percent (10%) or more of the outstanding and issued capital stock of the corporation, limited liability company, limited liability partnership, or limited partnership, and every officer, and every director must complete the box below.

True and Correct Name	Date of Birth	Residence Address No. & Street City, State & Zip <i>DO NOT LIST PO BOXES</i>	Residence Phone Number	No. of Years in Corp or LLC	% of Corpora te Stock Held	Have you been Convicted of a Felony Violation?	Have you been Convicted of a Violation Relating to Alcoholic Liquor or Malt Beverages?
Eric Nelson	1/22/1959	3611 S. Lindell Road Suite Ste 201 Las Vegas NV 89103	702-682-8918	11	40.5	YES ☐ NO ☒	YES ☐ NO ☒
						YES ☐ NO ☐	YES ☐ NO ☐
						YES ☐ NO ☐	YES ☐ NO ☐
						YES ☐ NO ☐	YES ☐ NO ☐
						YES ☐ NO ☐	YES ☐ NO ☐
						YES ☐ NO ☐	YES ☐ NO ☐

(If more information is required, list on a separate piece of paper and attach to this application)

REQUIRED ATTACHMENTS:

- ☒ A statement indicating the financial condition and financial stability of the applicant W.S. 12-4-102(a)(vi).
- ☐ Attach any lease agreements (especially for resort/political subdivisions leasing out food & beverage services) W.S. 12-4-103 (a)(iii)/W.S. 12-4-403(b)/W.S. 12-4-301(e).
- ☒ If transferring a license from one ownership to another, a form of assignment from the current licensee to the new applicant authorizing the transfer W.S. 12-4-601(b).

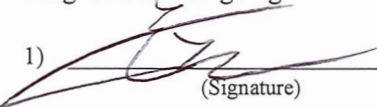
OATH OR VERIFICATION

(Requires signatures by **ALL** Individuals, **ALL** Partners, **ONE (1)** LLC Member, or **TWO (2)** Corporate Officers or Directors except that if all the stock of the corporation is owned by **ONE (1)** individual then that individual may sign and verify the application upon his oath, or **TWO (2)** Club Officers.) W.S. 12-4-102(b)

*Under penalty of perjury, and the possible revocation or cancellation of the license,
I swear the above stated facts, are true and accurate.*

Nevada
STATE OF ~~WYOMING~~)
COUNTY OF *Nevada*) SS.

Signed and sworn to before me on this 12 day of September, 2023 that the facts alleged in the foregoing instrument are true by the following:

- 1) 
(Signature)

ERIC NELSON
(Printed Name)

Manager
Title
- 2) _____
(Signature)

(Printed Name)

Title
- 3) _____
(Signature)

(Printed Name)

Title
- 4) _____
(Signature)

(Printed Name)

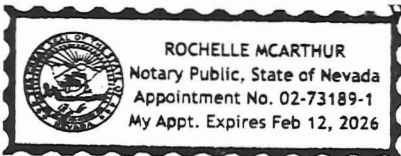
Title
- 5) _____
(Signature)

(Printed Name)

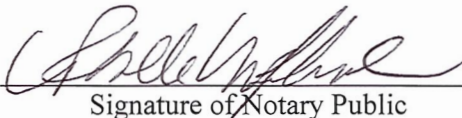
Title
- 6) _____
(Signature)

(Printed Name)

Title



Witness my hand and official seal:


Signature of Notary Public



CITY OF SHERIDAN, WYOMING

55 Grinnell Plaza
Sheridan Wyoming 82801
(307) 675-4211
cgood@sheridanwy.gov

- Provide your dispensing building design referencing alcohol service and storage locations, including outside consumption areas*

Nature of Business:

- Bar
- Package Liquor
- Restaurant

Regular Events:

- Happy Hour
- Live Entertainment

Special Events:

Other:

(All outside events require a Catering Permit)

Security/ Crowd Control/ Capacity Limits

The official occupancy limit for our business is:

126

In order to comply with our occupancy limits we shall:

In order to comply with the occupancy limits Wyoming Downs will monitor the occupancy by walking the floor and performing regular head counts.

We shall maintain peace and order in and around our business by (but not limited to):

- Requiring TIPS Training
- Reporting altercations or potential altercations to the Sheridan Police Department
- Follow all guidelines established by Chapter Four of Sheridan Municipal Code

Rules of the establishment shall be enforced by:

The Rules of the establishment will be enforced by the Manager, Chris Macha, as well as our Risk Manager, Lou Fatta, in connection with our Director of Operations, James Allstun.

Alcohol Management

To comply with Sheridan Municipal Code regarding alcoholic and malt beverages, including the use of eighteen (18) to twenty (20) year old servers in restaurants if applicable, our establishment will:



CITY OF SHERIDAN, WYOMING

55 Grinnell Plaza
Sheridan Wyoming 82801
(307) 675-4211
cgood@sheridanwy.gov

RETAIL LIQUOR LICENSE OPERATION PLAN

Name as it appears on license:	Wyoming Downs OTB4, LLC
Common Name (doing business as):	Wyoming Downs, LLC
Street Address:	2905 East Lake Dr., Suite 150, Las Vegas, NV 89117
Phone #:	307-259-1480 (Traci Lacock, General Counsel)

Hours of Operation

Our planned hours of operation are:

Monday:	10 a.m. – 12 a.m.
Tuesday:	10 a.m. – 12 a.m.
Wednesday:	10 a.m. – 12 a.m.
Thursday:	10 a.m. – 12 a.m.
Friday:	10 a.m. – 2 a.m.
Saturday:	10 a.m. – 2 a.m.
Sunday:	10 a.m. – 12 a.m.

Last call will be __30__ minutes before closing and last service will be __15__ minutes before closing.

Use of License

Please describe the characteristics of your operations:

Wyoming Downs is a pari-mutuel provider in the State of Wyoming that offers both wagering on live horse racing (simulcast) and Historic Horse Racing (gaming terminals).

- Will you be catering? If yes, name of catering company: No.



CITY OF SHERIDAN, WYOMING

55 Grinnell Plaza
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All employees are TiPs trained, which helps employees know how to spot an underage person. Additionally, this facility will become a 21 and older facility upon transfer of the liquor license.

I acknowledge that the Sheridan Police Department is an agent of the licensing authority and shall have the ability to inspect the licensed premises. Violations of City Code are subject to Section 4-13, resulting in action from Administrative Fees up to license revocation.

A handwritten signature in black ink, appearing to be "Eric Nelson", written over a horizontal line.

Signature of License Holder

A handwritten date "9.14.2023" in black ink, written over a horizontal line.

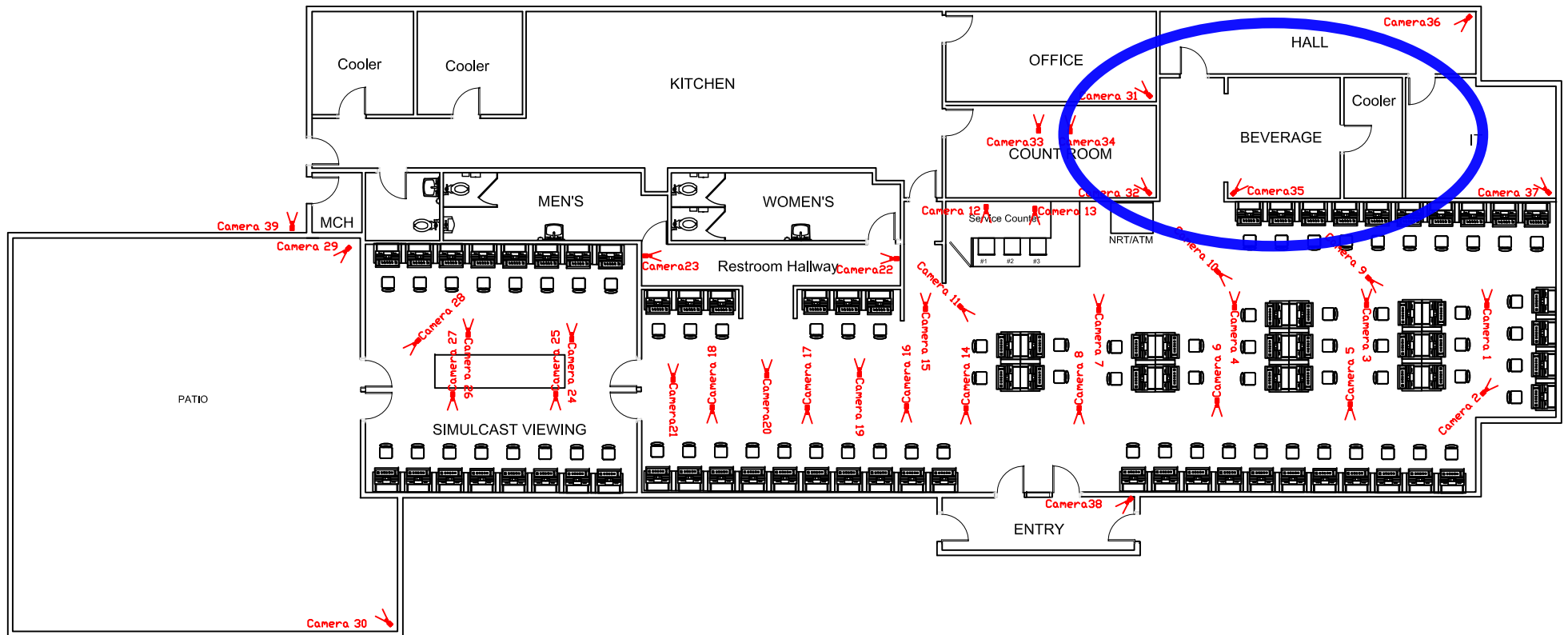
Date

Eric Nelson, Managing Member

Printed Name

*Outside consumption areas located on public right-of-way require a Sidewalk Use Agreement obtainable from the City Clerk's Office. Any substantial improvements on public right-of-way require a lease agreement.

SURVEILLANCE LAYOUT



UNLESS OTHERWISE SPECIFIED:

DIMENSIONS ARE IN INCHES
TOLERANCES:
FRACTIONAL ±
ANGULAR: MACH ± BEND
TWO PLACE DECIMAL ±
THREE PLACE DECIMAL ±

INTERPRET GEOMETRIC
TOLERANCING PER:

MATERIAL

APPLICATION

DO NOT SCALE DRAWING

NAME DATE

DRAWN **COOK** 5/2/2023

CHECKED

ENG APPR.

MFG APPR.

Q.A.

COMMENTS:

77 HHR TERMINALS

TITLE:

**WYOMING_DOWNS_SHERIDAN_OLES
GAME LAYOUT**

SIZE DWG. NO.

1

REV

0

SCALE:

WEIGHT:

SHEET 1 OF 1

Financial Statement for Liquor License Applicants

Applicant: WYOMING DOWNS OTB4, LLCDate: 7 / 31 / 2023

Assets

Current Assets

Cash	\$	<u>317,247</u>
Investments	\$	<u></u>
Inventory	\$	<u></u>
Prepaid Expenses	\$	<u>49,759</u>
Other Current Assets	\$	<u></u>
TOTAL CURRENT ASSETS	\$	<u>367,006</u>

Fixed Assets

Land	\$	<u></u>
Buildings	\$	<u></u>
Leasehold Improvements	\$	<u>48,615</u>
Furniture & Fixtures	\$	<u>248,990</u>
Other Fixed Assets	\$	<u>32,500</u>
TOTAL FIXED ASSETS		
\$	<u>330,105</u>	
Less- Accumulated Depreciation	\$	<u>(123,617)</u>
NET FIXED ASSETS	\$	<u>206,488</u>

TOTAL ASSETS (LINE1) \$ 573,494

Liabilities

Current Liabilities

Accounts Payable	\$	<u></u>
Note Payable	\$	<u></u>
Accrued Expenses (Interest, taxes, wages, etc.)	\$	<u>132,674</u>
Installment Loans Payable	\$	<u></u>
Other Current Liabilities	\$	<u></u>

TOTAL CURRENT LIABILITIES (Line 2) \$ 132,674

Capital

Capital

Sole Proprietor	\$	<u></u>
Corporation		
Capital Stock	\$	<u></u>
Treasury Stock	\$	<u></u>
Retained Earnings	\$	<u></u>

Partnership/LLC

Name of Partner	Capital
<u>WYOMING DOWNS, LLC</u>	\$ <u>440,820</u>
<u></u>	\$ <u></u>
<u></u>	\$ <u></u>
<u></u>	\$ <u></u>

TOTAL CAPITAL (LINE 3) \$ 440,820

TOTAL LIABILITIES & CAPITAL

(Line 2 = Line 3) Must equal line 1 \$ 573,494