



Agenda Commentary

Item Title/ Subject: Pioneer Long Distance, Inc.

Staff Source: Lisa Anders

History/Background Information: City Code requires a Service and Inspection Fee of two percent to a company providing telephone services in the City of Clinton.

Item/Subject Summary: City Attorney Ryan Meacham and Pioneer Long Distance Inc. have reviewed and presented a Right-of-Way Agreement to allow telephone service in the City of Clinton.

Price/Cost: 0

Recommendation: Approval of agreement

RIGHT-OF-WAY AGREEMENT

THIS RIGHT-OF-WAY AGREEMENT, entered into in duplicate this ____ day of May, 2014, between Pioneer Long Distance, Inc., hereinafter called the "Company", and the CITY OF CLINTON, a municipal corporation, situated in Custer County, State of Oklahoma, hereinafter called "City."

Whereas, Pioneer Long Distance, Inc has been granted a Certificate of Public Convenience and Necessity, authorizing Pioneer to furnish local exchange telecommunications service in the State of Oklahoma.

Whereas the City of Clinton has enacted Ordinance number 3-6A-1, which regulates a Telephone Exchange Entity.

WITNESSETH:

City, upon the receipt of the payment of an annual service and inspection fee of two percent (2%) of the revenues collected by Company for its provision of local exchange telecommunications services within the City, and pursuant to the covenants and agreements hereinafter contained to be kept and performed by the Company, does hereby permit the Company to lay cable along, across and within public right-of-way within the corporate limits of the City.

This right to occupy the public rights-of-way is granted by the City and accepted by the Company upon the terms set forth herein and subject to the following conditions.

1. The method of construction of telecommunications facilities along, over, across and within the public rights-of-way shall be subject to the approval of the City Engineer and/or City Inspector of the City.
2. Said facilities shall be constructed, repaired, and renewed and maintained by the Company's own cost and expense, in a safe, proper and workmanlike manner, and at such times and in such manner as not to prevent or interfere with the safe, proper and convenient movement of traffic along, over and across said property above described.
3. The Company agrees that it will at all times hereafter indemnify, defend, protect and save harmless the City from and against any and all damages, claims, demands, suits, actions, and causes or action arising from or growing out of all injuries to or deaths of persons, or loss or destruction of or damages to property, caused or contributed to by the negligence or default of Company, its contractors, agents, or employees, in the construction, maintenance, operations, altering, repairing or renewing of said cable.
4. The Company shall leave all property described in a solid and safe condition. If the Company shall fail to make any repairs or do any work required of said Company by the provisions of this permit within ten (10) days after receipt of written notice from the City

calling attention thereto and requesting such repairs or work to be done, then the City shall have the right to make such repairs or do such work at the expense of the Company, and the Company shall reimburse the City for the cost and expense of such repairs or work promptly upon receipt of a bill therefore by the City to the Company.

5. The rights granted by this Agreement may not be transferred, assigned, or disposed of by sale, lease, merger, consolidation, or other act of the grantee, by operation of law or otherwise without the prior written consent of the City.

6. It is understood and agreed by the parties hereto that this Agreement is subject to any and all Ordinances now in force or hereafter enacted by said City and to any and all existing rights of other public utilities under and by virtue of City Ordinances or franchises heretofore granted and executed by the City.

7. The Company shall, at its own expense, furnish such barricades, fences, lights and danger signals, shall provide such watchman, and shall take such other precautionary measures for the protection of persons, or property, as are necessary. Neither the materials excavated nor machinery used in the construction of any manholes shall be placed so as to endanger the work, or prevent free access to all water valves, gas valves, manholes, or electric, telephone or telegraph conduits, or fire alarms or police call boxes in the vicinity. The City reserves the right to remedy neglect on the part of the Company as regards the protection of the work of the Company's expense.

8. It is expressly understood, that this Agreement conveys no property interest in or to any street, alley, easement or other public right-of-way subject hereto.

9. The rights and obligations under this Agreement do not constitute any express or implied warranties as to the legal title to, right to legal possession or the physical condition of any property subject to this Agreement.

10. Company agrees to pay the City a Service and Inspection Fee as established by City Code 3-6A-1, on a quarterly basis. Such fee shall be paid on or before the 15th day of the month following the close of the calendar quarter and shall be calculated based on the prior quarter's collected local exchange revenues.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate by their proper officers "hereunto authorized the day and year first above written:

PIONEER LONG DISTANCE, INC.

CITY OF CLINTON

By: 
Name: Richard Ruhl
Its: General Manager

By: _____
Name: _____
Its: Mayor

(SEAL)

CITY CLERK

Approved as to form this ____ day of _____, 2014.

CITY ATTORNEY