

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**APRIL 16, 2013 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
LEASE AGREEMENT- DARK FIBER COMMUNICATION NETWORK	◆ RESOLUTION ORDINANCE RECEIVE/FILE	IT COMMITTEE SHEILA A. LINDBERG

**SYNOPSIS**

A resolution has been prepared to approve a lease agreement for dark fiber from Unite Private Networks, LLC in an amount not to exceed \$3,850 per month. The approval also authorizes a one-time initial non-reoccurring payment and equipment purchase in an amount not to exceed \$16,500.

**FISCAL IMPACT**

The FY12/13 Capital Improvement Program has funding for the initial payment and equipment. It is recommended that the subsequent \$46,200 annual payments become part of the annual IT budget to be funded with Lottery Fund transfers. Note: Annual payments of \$46,200 for 15 years. Maintenance cost is \$23,100 annually after 15 years.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The dark fiber project was initially recognized when Sarpy County Information Systems (SCIS) became aware that the Papillion La Vista School District (PLSD) incorporated funding in their 2012 School Board Bond Issue to obtain fiber optic connectivity between all of the school buildings, administration offices and the ESU#3. A memorandum from Sarpy County Information Systems Director Mark Walters providing specific information regarding the proposal is attached to this staff report for your consideration.

The City currently utilizes a point-to-point wireless system which is fairly reliable, however it can be hindered by weather conditions. The system has moderate bandwidth for the cost. Cost for the wireless equipment is in tower climbing (approximately \$1,000/climb), maintenance costs and periodic replacement. It is recommended to replace equipment every 5 years as it becomes difficult to maintain or repair. This is due to the equipment becoming antiquated and no longer supported by the manufacturer. We upgraded, replaced and added the Library onto our network in FY12 at the cost of approximately \$60,000. This replacement was for equipment purchased in 2006. Real costs that will be avoided will be the maintenance of the current communications equipment being used and the replacement of it every five years.

Since this project was initiated by Papillion La Vista School District (PLSD), the service will be provided very close to the City facilities. Unite Private Networks (UPN) will already be providing engineering costs, right of ways, and construction costs to construct the fiber network for PLSD. The build costs to UPN will be lower if UPN knows the intent and path for the City fiber networks while building the PLSD network. This means that the pricing for the City can be lower than a private network project done individually.

It is unlikely that the City will be offered an opportunity of this type in the future. Implementing this solution at the time of least cost will aid the City in “future proofing” the bandwidth for future uses.

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Sarpy County Information Systems  
1210 Golden Gate Drive Suite 1128  
Papillion, Nebraska 68046

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402.593.2325  
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## MEMORANDUM

**To:** Sheila Lindberg, La Vista Finance Director  
**From:** Mark Walters, Sarpy County Information Systems  
**Subject:** Dark Fiber Project  
**Date:** April 4, 2013

### **General Project Information:**

The dark fiber project was initially recognized when Sarpy County Information Systems became aware that the Papillion La Vista School District (PLSD) was budgeting approximately \$3 million dollars in their 2012 School Bond Issue to obtain fiber optic connectivity between all of the school buildings, administration offices, and the ESU #3. PLSD issued an RFP and Unite Private Networks (UPN) won the bid to provide the specified connectivity. (See attached PLSD RFP)

Information Systems met with Papillion, La Vista, PLSD, and UPN representatives and discussed the possibilities of providing fiber connectivity to all of the City/County buildings. UPN described the process and also made the group aware that they have done similar work in the City of Lincoln. Typically, a school district will be the leader in the fiber/bandwidth project and many times local governments will follow with similar fiber/bandwidth requirements.

Each government entity, Papillion, La Vista, and Sarpy, submitted a prioritized list of buildings and/or facilities that they would like connected. This list was then presented to UPN to provide estimates for pricing.

### **What warrants the need for dark fiber connectivity?**

Every year technology requires more and more bandwidth. New applications such as Voice over Internet Protocol (VOIP phones), video streaming, data duplication, and Internet (Cloud) applications push bandwidth requirements even higher. Continuing to add or update equipment and/or purchasing more bandwidth from a communications provider starts to become fiscally difficult in many instances.

Dark fiber will allow the City/County to provide nearly unlimited bandwidth between City/County facilities. Today's technology will allow 1,000 Mb (1 Gb) of data to flow over the dark fiber with very little cost in equipment. Gigabit speeds will allow the City/County to provide bandwidth needs

for years to come.

This project will also extend network connectivity to facilities not being served today. Those facilities will be the Softball Complex and Swimming Pool. Network connectivity will allow the City to provide Point-of-Sale equipment that directly reports/runs from the City Hall and also provide public wi-fi for citizens utilizing those facilities.

### **Why now?**

Since this project was generally initiated by Papillion La Vista School District (PLSD), the RFP winner is already providing service very close to the City/County facilities. Unite Private Networks (UPN) will already be providing engineering costs, right-of-ways, and construction costs to construct the fiber network for PLSD. The build costs to UPN will be lower if UPN knows the intent and path for the City/County fiber networks while building the PLSD network. This means that the pricing for the City/County can be lower than a private network project done individually (ad hoc).

It is highly unlikely that the City will be offered an opportunity of this type in the future. Implementing this solution at the time of least cost will aid the City in "future proofing" the bandwidth for future uses.

### **Are there other options? If so, why is this the best?**

There are few other options, some that are already being utilized by the City/County:

Point-to-Point wireless

Communication Service Providers (Century Link, Cox Communications, etc.)

Private Owned Fiber

#### **Point-to-Point wireless**

Point-to-Point wireless units provide a fairly reliable and moderate bandwidth for the cost. Cost for wireless equipment is in tower climbing, maintenance costs, and periodic equipment replacement. Sarpy County has found that wireless equipment has a life span of approximately five (5) years. After five (5) years, equipment is difficult to maintain and obtain as it has become antiquated and no longer supported by the manufacturer.

Bandwidth is directly proportional to the current technology available and the price being paid for the units. Each year, wireless technologies become more robust and faster, so when you purchase your wireless technology is where you will fall in the spectrum on bandwidth. Cost is also a factor in wireless speed, the more spent (to a point) the more bandwidth that can be obtained.

Using a fifteen (15) year time frame a wireless network will most likely be replaced

twice.

### **Communication Service Providers**

The customary method for providing connectivity between City/County facilities has been to purchase bandwidth from a local service provider. Communication service providers in the Omaha area are: Century Link, Cox Communications, Windstream, etc.

Communications service providers generally provide service by bandwidth. The more bandwidth requested the more the cost. Sometimes a service provider will have high speed connectivity options (fiber) in the area and sometimes not. If they do not have the connectivity in the area they will typically price the service in such a way as to recoup network building costs in the monthly service and contract length.

Communications service providers provide reliable service at a known cost. Highspeed bandwidth may be available but it will be costly.

### **Private Fiber:**

Private fiber is utilized by the City/County in various areas. Private fiber can be expensive and has costs associated with it that are often overlooked. Engineering costs, maintenance (locating services), relocating, and repair.

When the City/County route private fiber, if they leave the City/County owned land it is necessary to engineer the path, right-of-ways, access boxes, and entrances to the facility. Engineering costs can be expensive.

Private fiber will also require locating service if/when construction is being performed in the area of the fiber path.

Relocating fiber will be expensive and may create downtime for the communications link. Usually a well engineered private network route may lower the odds of having to relocate but doesn't guarantee it.

Private fiber has nearly unlimited bandwidth, but may be costly to construct and maintain.

### **Dark Fiber (proposed lease):**

Dark fiber is the same as a private fiber network except it is leased from a network provider. The network is then maintained by the network provider and all up front construction costs, engineering, permits, right-of-ways, etc. are provided by them. Maintenance, relocating, and repair are all covered by the private network provider.

The private network speed is determined by the equipment provided by the City/County. Current bandwidth speeds of 1 Gb can be achieved without expensive

equipment (less than \$3,000 per end). In many areas the equipment may already be in place at the City/County.

Dark fiber provides nearly unlimited bandwidth with a known monthly cost.

**Are there any current or future expenditures that will be reduced?**

Cost for duplicate services to some of the facilities may be eliminated such as Internet access at the golf course. The real costs that will be avoided will be the maintenance of the current communications equipment being used. It would be probable that the City will replace the point-to-point wireless over the fifteen (15) year lease. It is also expected that various tower climbs will be required to perform maintenance/repair to the units.

High speed connectivity to the County Courthouse, City of Papillion, and possibly the City of Bellevue (future) may allow the exchange and collaboration of data or services. Some of the services that may be shared (but not limited to):

- Co-location of backup equipment and data (disaster planning/recovery)
- Sharing of common equipment and software (ex. Email server)
- Document Management/Content Management System (proposed)
- Phone System (VOIP)

Without the issue of bandwidth limitations many options will be available to the City in the future.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE APPROVAL OF A LEASE AGREEMENT FOR DARK FIBER FROM UNITE PRIVATE NETWORKS, LLC IN AN AMOUNT NOT TO EXCEED \$3,850.00 PER MONTH AND A ONE-TIME NON RE-OCCURRING COST AND EQUIPMENT PURCHASE IN AN AMOUNT NOT TO EXCEED \$16,500.

WHEREAS, the Mayor and Council have determined good technology communication between city facilities now and into the future is necessary, and

WHEREAS, the FY 2012/13 Capital Improvement Program provides funding for the proposed project; and

WHEREAS, future lease payments will be necessary; and

WHEREAS, Unite Private Networks, LLC was the lowest most responsible bidder; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council hereby approve a lease agreement for dark fiber from Unite Private Networks, LLC in form and content presented at this meeting, and all related maintenance or other agreements, instruments or documents, in an amount not to exceed \$3,850.00 per month for the first 15 years and \$1,925 per month for the next 15 years, and a one-time non re-occurring cost and equipment in an amount not to exceed \$16,500, subject to such modifications as the City Administrator, or her designee determines necessary or appropriate in consultation with the City Attorney ("Lease").

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to take all further actions as necessary or appropriate to carry out the actions approved in this Resolution, including, but not limited to, executing said Lease.

PASSED AND APPROVED THIS 16TH DAY OF APRIL, 2013.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk



Customer: City Of La Vista  
Proposal: Dark Fiber Wan  
Date: 2/19/2013

#### Summary

	<u>Location A</u>	<u>Location Z</u>	<u>Product</u>	<u>15 YEAR</u>	
				<u>MRC</u>	<u>NRC</u>
La Vista, NE: La Vista City Hall	La Vista, NE: Police Dept	1 Pair of fibers back to A Location		\$550.00	\$900.00
La Vista, NE: La Vista City Hall	La Vista, NE: Library	1 Pair of fibers back to A Location		\$550.00	\$900.00
La Vista, NE: La Vista City Hall	La Vista, NE: Public Works	1 Pair of fibers back to A Location		\$550.00	\$900.00
La Vista, NE: La Vista City Hall	La Vista, NE: La Vista Golf	1 Pair of fibers back to A Location		\$550.00	\$900.00
La Vista, NE: La Vista City Hall	La Vista, NE: Lavista Sports	1 Pair of fibers back to A Location		\$550.00	\$900.00
La Vista, NE: La Vista City Hall	La Vista, NE: LA Visat Pool	1 Pair of fibers back to A Location		\$550.00	\$900.00
La Vista, NE: La Vista City Hall		6 Pair of Fibers back to this location		\$550.00	\$900.00
		<b>Total:</b>	<b>\$3,850.00</b>	<b>\$6,300.00</b>	

#### Notes

This quote is valid only for new, incremental circuits. Rates do not apply to existing circuits.

Pricing is in U.S. Dollars.

All prices are exclusive of any applicable taxes.

Additional charges may apply in respect to US taxes, USF and regulatory fees.

Pricing subject to entering into Unite Private Networks Standard Master Service Agreement and Service Order Errors and omissions excepted.

Pricing valid through 04/15/2013

Matthew Simmons  
Director of Enterprise - Omaha, KS-Kansas City  
Unite Private Networks, LLC  
(O) 402-326-5039  
[Matthew.Simmons@upnllc.com](mailto:Matthew.Simmons@upnllc.com)

SLA	G4S Technology	Century Link	Unite	Conterra	Cox
Erater Eligibility	Yes	Yes	Yes	Yes	Yes
Spin	143032595	143005231	143029868	143025700	143015410
Upfront Payment	Yes	Yes	Yes	Yes	Yes
10 yr contract	Yes	Yes	Yes	Yes	Yes
IP Scheme	Yes	Yes	Yes	Yes	Yes
Permits					
End Connections	None	Provided Cisco	GBICs Only	all provided	All Provided
Connection Type	Dedicated	Shared	Dedicated	Dedicated	Shared
References	Provided	Provided	Provided	Provided	Provided
Option 1 Pricing					
total 1	Clarification	4677600	1.8 million	2.89 million	3.6 million
Option 2 Pricing	Clarification	43,570/month	18,585 monthly		31,880
Total 2		5228400	2230200		30,000 month
Option 3 Pricing	Clarification	none given	1.425 million up front\2,595	3,825,600	3.6 million
total 3		NA	950,000/15,250		3.6 million
11 year option	none given		1736400	2780000	3.6 million
			not to exceed 70% of initial contract	none given	none given
Hardware not Provided	Cisco 12 port router\layer 3 switch 1 per building 4,900 per device = 107,800				
	Cisco 6000 aggregation router 12,200				
	Total extra Hardware = 119,800				

**MASTER DARK FIBER  
LEASE AGREEMENT**

**Between**

Unite Private Networks, LLC  
950 W 92 Highway, Suite 203  
Kearney, Missouri 64060

**And**

**Customer**

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## MASTER DARK FIBER LEASE AGREEMENT

THIS MASTER DARK FIBER LEASE AGREEMENT (this "Agreement" or "Lease Agreement") is made as of the date of the last signature hereto (the "Effective Date") by and between Unite Private Networks, LLC, a Delaware limited liability company, 950 West 92 Highway, Suite 203, Kearney, Missouri 64060 ("Supplier"), and the City of La Vista, Nebraska a Nebraska(insert) municipal corporation, having its principal office at 8116 Park View Boulevard, La Vista Nebraska, 68128, ("Customer"); each on behalf of itself and for the benefit of its Affiliates (hereinafter defined).

### **BACKGROUND:**

WHEREAS, Supplier, through ownership or other arrangements, has obtained all rights to use a fiber optic communication system sufficient for Supplier to perform this Agreement (the "Supplier Network"); and

WHEREAS, Customer and its Affiliates desire to acquire from Supplier, and Supplier desires to provide to Customer and its Affiliates, exclusive, indefeasible rights to use certain optical fibers in various portions of the Supplier Network upon the terms and conditions set forth below; and

WHEREAS, Supplier and Customer, or its Affiliates, may add optical fibers to this Agreement from time to time by executing orders substantially in the form of Exhibit A hereto, subject to the terms and conditions set forth below; and

WHEREAS, the parties intend that Customer or its Affiliates, as the case may be, shall have substantially all benefits associated with ownership of such optical fibers, subject to the provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **ARTICLE I** **DEFINITIONS**

Capitalized terms and phrases used in this Agreement shall have the following meanings:

"Acceptance Date" means, with respect to a Dark Fiber Route Order, the date of Customer's acceptance of the Dark Fibers under said Dark Fiber Route Order, as provided by Supplier in accordance with all applicable requirements, including without limitation this Agreement and Customer specifications, to the satisfaction of the Customer as indicated in writing signed by the City Engineer or the City Engineer's designee.

"Affiliates" means, as the context requires, with respect to Supplier, "Supplier Affiliates"; or, with respect to Customer, "Customer Affiliates."

“Agreement” shall have the definition set forth in the first paragraph, above, and includes any addendum and amendments hereto.

“Cable” means the fiber optic cable included in the System along the Route and Fibers contained therein that includes the Customer Fibers.

“Claims” shall have the definition set forth in Section 13.1 (“Indemnification”).

“Conduit” means a pipe, tube or compartmentalized structure which can contain one or more Innerducts through which Cable may be placed.

“Contract Price” shall have the definition set forth in Section 3.1 (“Contract Price”).

“Customer Affiliate” means an entity that controls, is controlled by, or is under common control with Customer.

“Customer Fibers” means those certain Fibers in which Customer shall be granted a Dark Fiber Lease hereunder as set forth in Section 2.1 (“Granting of Dark Fiber Lease”).

“Dark Fiber Lease Initial Term” shall have the definition set forth in Section 8.1 (“Term”).

“Dark Fiber Lease” is a right to use the specified property, but does not convey title, ownership, or rights of possession or salvage in any real or personal property.

“Effective Date” shall mean the date as set forth in the first paragraph of this Agreement.

“Facility Owners” means any entity (other than Supplier) (a) owning any portion of the System or any property or security interest therein, and/or (b) leasing to Supplier any portion of the System.

“Fibers” means any optical fibers contained in the System, including the Customer Fibers, the fibers of Supplier and the fibers of any third party in the System excluding, however, any fibers granted (whether through ownership, IRU, lease, or otherwise) to Government Authorities in exchange for use of streets, rights of way, or other property under the jurisdiction of such entity.

“Force Majeure Event” shall have the definition set forth in Article XX (“Force Majeure”).

“Indemnified Party” shall have the definition set forth in Section 13.1 (“Indemnification”).

“Indemnifying Party” shall have the definition set forth in Section 13.1 (“Indemnification”).

“Innerduct” means a single enclosed raceway within a Conduit used to subdivide the Conduit, or any other type of duct including inner, quad, divided or other duct, within which a Cable may be placed.

“Lenders” means one or more financial institutions, vendors, suppliers or other financing sources utilized by Supplier or Customer, as the case may be.

“Required Rights” shall have the definition set forth in Section 4.2 (“Acceptance Date Obligations”).

“Route” shall mean, with respect to a Dark Fiber Route Order, the route, including spurs, described in such Dark Fiber Route Order and upon which the Customer Fibers for such Dark Fiber Route Order are or will be installed.

“Segment” means a discrete portion of the System and may refer to a span, a portion between two points of presence or a point of presence and a System end point, or a portion of the System affected by a relocation or other circumstance.

“Supplier Affiliate” means, with respect to Supplier, an entity controlling, controlled by, or under common control with Supplier by means of direct or indirect majority equity ownership. For purposes of this Agreement, however, “Supplier Affiliate” shall not be construed to include a wireless service provider that is a direct competitor of any Customer Affiliate.

“Supplier Network” shall have the meaning set forth in the Background section of this Agreement.

“System” means, collectively, those certain portions of the Supplier Network, consisting of the Routes, along which Supplier grants Customer a Dark Fiber Lease in Customer Fibers pursuant to Dark Fiber Route Orders hereunder.

## **ARTICLE II** **GRANTING OF DARK FIBER LEASE**

**2.1 Conveyance.** Subject to the terms and conditions of this Agreement and commencing upon the Acceptance Date for the Dark Fiber Route Order, Supplier hereby grants and conveys to Customer a Dark Fiber Lease (the “Customer Lease”) an exclusive indefeasible right to use the specific strands of Fibers (“Customer Fibers”) designated by Supplier in the Cable over the Route pursuant to said Dark Fiber Route Order, and all strands and fibers substituted for or replacing any Customer Fibers, for example, in the event any strand or fiber is defective or fails and must be replaced. From time to time upon request by Customer, additional optical fibers on the Supplier Network shall be granted from Supplier to Customer by executing a Dark Fiber Route Order in the manner set forth in Section 2.3 or Section 2.4 below.

**2.2 Rights Not Granted.** Subject to Supplier performance in accordance with this Agreement, Customer agrees to accept said Customer Lease and the rights and obligations pursuant thereto as set forth in this Agreement. Except as otherwise provided in this Agreement, such Dark Fiber Lease grant does not convey or grant any legal title to any real or personal

property, including the Fibers, the Cable, or the System. The Customer Lease does not include any equipment used to transmit capacity over or “light” the Fibers. Use of Customer Fibers shall be limited to Customer, any other political subdivisions or public bodies as Customer periodically may designate, and any boards, bodies, agencies, affiliated entities, departments, committees, commissions, joint undertakings, organizations, officers, officials or staff of Customer or any other such political subdivisions or public bodies, and Customer otherwise may not assign, lease, or allow any other party the right to use the Fibers, the Cable, or System without Supplier’s express consent. Any use by Customer that is contrary to the immediately preceding sentence shall be grounds for termination by Supplier.

**2.3 Dark Fiber Route Orders.** From time to time upon request by Customer, additional Customer Fibers shall be provided by Supplier and incorporated herein by execution of a Dark Fiber Route Order by Supplier and Customer. Each Dark Fiber Route Order shall identify the Route and specify the number of Fibers in which Customer is granted a Dark Fiber Lease. Each Dark Fiber Route Order shall incorporate the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained herein, Supplier shall not be obligated to accept or execute any order forms submitted by Customer or any Customer Affiliate if facilities or capacity are not reasonably available to Supplier to accommodate the order.

**2.4 Affiliate Orders.** A Customer Affiliate that executes a Dark Fiber Route Order shall be bound by and may enforce the terms and conditions of this Agreement with respect to such Dark Fiber Route Order as though it were an original party and a direct signatory to this Agreement. Default by one Customer Affiliate shall not affect any other Dark Fiber Route Order executed by any other Customer Affiliate..

### **ARTICLE III** **INVOICING AND PAYMENT**

**3.1 Contract Price.** The price for the Customer Fibers shall be set forth in the Dark Fiber Route Order for said Fibers (the “Contract Price”).

**3.2 Method of Payment.** Subject to the provisions of Section 12.2 (“Disputed Amounts”), Customer shall make payment of undisputed charges pursuant to Section 3.1 (“Contract Price”) above by check or by wire transfer of immediately available funds to the account designated by Supplier. Customer shall make payment of all other undisputed charges that may become due under this Agreement by check or by wire transfer of immediately available funds to the account designated by Supplier in accordance with Section 3.3 below, unless otherwise agreed to by the parties.

**3.3 Time of Payment.** Supplier will invoice Customer for all charges due under this Agreement as noted in the applicable Dark Fiber Route Order; provided, however, Customer’s payment obligations shall not begin before Supplier has provided Customer all Customer Fiber and other deliverables in good and working condition and in accordance with this Agreement and Customer’s specifications, subject to inspection and satisfaction of Customer’s City Engineer. Except as provided in Section 3.1 (“Contract Price”) and subject to Section 12.2 (“Disputed Amounts”), all undisputed amounts shall be paid within forty-five (45) calendar days following

actual receipt of the invoice. In addition to other provisions of this Agreement, Customer's obligation to make further payments under this Agreement shall cease upon Supplier's default described in Section 12.2 that continues uncured if cure is permitted.

## **ARTICLE IV** **ACCEPTANCE**

**4.1 Fiber Acceptance Testing.** Supplier shall provide Customer at least seven (7) days advance notice of the date and time of final end-to-end testing for a Dark Fiber Route Order. Customer shall have the opportunity to have a person or persons present to participate in and observe Supplier's final end-to-end testing. Within five (5) days following the conclusion of final end-to-end testing, Supplier shall provide Customer with certified test results.

**4.2 Acceptance Date Obligations.** This Agreement, including without limitation the Acceptance Date of any Dark Fiber Route Order and any payment obligation of Customer hereunder, shall be subject to the following conditions: Supplier shall obtain all rights, licenses, authorizations, easements, leases, fee interests, or agreements that provide for the occupancy of the associated Route of real property or fixtures (such as conduit, bridges, river crossings, or transmission towers) on which the Route is located, to the satisfaction of this City Engineer. In the event Supplier does not own a portion of the System, Supplier shall have obtained (by IRU agreement, lease, or otherwise) the right to occupy the real property or fixtures along any portion of the Route it does not own as described in the Dark Fiber Route Order. Supplier shall maintain the Required Rights throughout the Dark Fiber Lease Initial Term and any extension thereof.

## **ARTICLE V** **CONNECTION AND ACCESS TO THE SYSTEM**

**5.1 Connections.** All requirements, charges and payments for Customer's use of Customer Fibers or otherwise under this Agreement, including without limitation related use of Cable, System and Route, and connection of Customer or Supplier facilities with the Customer Fibers shall be as specified in the applicable Dark Fiber Route Order.

**5.2 No Unauthorized Access to System.** Except as otherwise provided in this Agreement, Customer shall not access any part of the System without the prior written consent of Supplier, and then only upon the terms and conditions specified by Supplier.

## **ARTICLE VI** **MAINTENANCE**

**6.1 Requirement.** Supplier, during the longer of this Agreement or any Dark Fiber Route Order is in effect, shall provide and maintain all systems, facilities, equipment and components that are required or provided by Supplier under this Agreement in good and working order, condition and repair, and free from all defects whatsoever. Supplier from time to time shall make such repairs or replacements as necessary to correct any defects that arise.

**6.2 Access to System.** Customer shall not access any part of the System without the prior written consent of Supplier, and then only upon the terms and conditions specified by

Supplier; provided, however, in the event this Agreement terminates, Customer shall have the right at its cost to disconnect Customer's facilities from the System.

**6.3 Routine Maintenance.** During the term of a Dark Fiber Route Order, Supplier shall perform all routine maintenance. Supplier shall avoid performing routine maintenance between 0600-2200 local time, Monday through Friday, inclusive, that will have a disruptive impact on the continuity or performance level of the Customer Fibers. However, the preceding sentence does not apply to restoration of continuity to a severed or partially severed fiber optic cable, restoration of dysfunctional power and ancillary support equipment, or correction of any potential jeopardy conditions.

**6.4 Notice.** Supplier shall provide Customer with telephone, facsimile, or written notice of all non-emergency planned network maintenance (a) no later than three (3) business days prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting Customer's traffic. If Supplier's planned activity is canceled or delayed, Supplier shall promptly notify Customer and shall comply with the provisions of the previous sentence to reschedule any delayed activity.

**6.5 Non-routine Maintenance.**

**A. Emergency Repair.** Except as may otherwise be specified in a Dark Fiber Route Order, Supplier acknowledges that time is of the essence with respect to the correction or repair of Cable discontinuity or damage. Supplier shall use commercially reasonable efforts to repair Cable traffic discontinuity within the following times:

- Dispatch of personnel to problem area – immediately upon learning of discontinuity
- Arrival of first maintenance employee/contractor on site – when discontinuity or damage occurs on any business day, within two (2) hours of learning of the discontinuity or damage, and when discontinuity or damage occurs on any weekend or national holiday, within four (4) hours of learning of the discontinuity or damage.

**B. Notice.** Supplier shall provide Customer with the greatest possible advance telephone, facsimile, or written notice of all emergency network repair that has a substantial likelihood of affecting Customer's traffic.

**C. Permanent Repair.** Within twenty-four (24) hours after completion of an emergency repair, Supplier shall commence its planning for permanent repair, shall notify Customer of such plans, and shall implement such permanent repair within an appropriate time thereafter.

## **ARTICLE VII** **USE OF THE SYSTEM**

**7.1 Customer's Rights Exclusive.** Customer shall have the exclusive, indefeasible use the Customer Fibers for any lawful purpose. Supplier shall have no right to use the Customer Fibers during the term of the applicable Dark Fiber Route Order, except in the event of an uncured Customer default with respect to such Dark Fiber Route Order as set forth in Article XII ("Default and Cure").

**7.2 Notice of Damage.** Customer shall promptly notify Supplier of any matters pertaining to any damage or impending damage to or loss of the use of the System that are known to it and that could reasonably be expected to affect the System adversely. Supplier shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Customer Fibers that are known to it and that could reasonably be expected to adversely affect the Customer Fibers.

**7.3 Preventing Interference with Other Fibers.** Neither Customer nor Supplier shall use equipment, technologies, or methods of operation that interfere in any way with or adversely affect the System or the use of the System by the other party or third parties or their respective Fibers, equipment, or facilities associated therewith. Supplier shall take all reasonable precautions to prevent damage, and Customer shall take all reasonable precautions not to cause damage, to the System or to Fibers used or owned by the other party or third parties.

**7.4 Liens.** Supplier shall not cause or permit any of Customer's rights under this Agreement to become subject to any mechanic's, materialmen's, vendor's or any similar lien, or to any tax lien. Customer acknowledges that it has no title to and cannot and shall not in any way encumber the Cable or any other property that is the subject of this Agreement that is not owned by Customer.

## **ARTICLE VIII** **TERM AND TERMINATION**

**8.1 Term.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided in this Agreement, shall continue in effect for a period of \_\_\_\_ ( ) years (the "Initial Term"). Thereafter, this Agreement shall be automatically renewed for successive one (1) year periods (each such period, an "Additional Term" and, together with the Initial Term, the "Term") unless and until terminated pursuant to Article XII hereof or by either party upon one hundred eighty (180) days' written notice to the other party. Notwithstanding the foregoing, the term of the Dark Fiber Lease of a Dark Fiber Route Order shall begin on the Acceptance Date for such Dark Fiber Route Order and shall, subject to earlier termination pursuant to Article XII ("Default and Cure"), expire at the end of the time period set forth in the applicable Dark Fiber Route Order as the initial term (the "Dark Fiber Lease Initial Term").

**8.2 Effect of Termination.** No termination of this Agreement shall affect the rights or obligations of any party hereto:

- (a) with respect to any payment hereunder for services rendered before the termination;
- (b) pursuant to the respective obligations of the parties under this Agreement that by their nature would continue beyond the termination, including but not limited to obligations under Article X (“Audit Rights”), Article XIII (“Indemnification”), Article XIV (“Limitation of Liability”), Article XV (“Insurance”), Article XVI (“Taxes and Governmental Fees”), Article XVIII (“Non-Disclosure; Publicity and Advertising”), Article XXI (“Intellectual Property”) and Article XXII (“Rules of Construction”); or
- (c) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

## **ARTICLE IX** **RELOCATION; CONDEMNATION AND EMINENT DOMAIN**

**9.1 Relocation Procedures.** If Supplier determines in its reasonable business judgment, or is required by a third party with legal authority to do so, to relocate all or any portion of the System or any of the facilities used in the provision of the Customer Lease, Supplier shall provide Customer sixty (60) calendar days’ prior written notice of any such relocation, if possible, and shall proceed with such relocation. Supplier shall utilize commercially reasonable efforts, in coordination and cooperation with Customer, to accomplish the relocation in a manner that does not disrupt or result in any adverse impact on Customer communications or use of Customer Fibers.

**9.2 Condemnation and Eminent Domain.** In the event that any portion of the Customer Fibers of a Dark Fiber Route Order becomes the subject of a proceeding by any governmental agency or other party having the power of eminent domain for public purpose or use, both parties to such Dark Fiber Route Order shall be entitled, to the extent permitted by law, to participate in such condemnation or eminent domain proceeding for compensation by either joint or separate awards for the economic value of their respective interests in the Customer Fibers of such Dark Fiber Route Order that are subject to the condemnation or eminent domain proceeding.

## **ARTICLE X** **RESERVED**

## **ARTICLE XI** **WARRANTIES AND DISCLAIMERS**

**11.1 Warranties Relating to Agreement Validity.** In addition to any other representations and warranties contained in this Agreement, Supplier and Customer each represents and warrants to the other party that:

- (a) it has the full right and authority, and has taken all necessary corporate or similar action, to enter into, execute, deliver, and perform its obligations under this Agreement and its Dark Fiber Route Order(s); and
- (b) its execution of and performance under this Agreement and its Dark Fiber Route Order(s) shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body; and

## **ARTICLE XII** **DEFAULT AND CURE**

**12.1 Default and Cure.** Except as set forth in Section 12.2 (“Disputed Amounts”), a party shall be in default under this Agreement if (i) that party fails to make a payment when due of any undisputed amount required under this Agreement and such failure continues for more than fifteen (15) days after such party receives written notice of such failure from the non-defaulting party; or (ii) such party fails to perform or comply with any other obligation, agreement, term, or provision of this Agreement applicable to it and such failure continues for more than thirty (30) days after such party receives written notice of such failure from the non-defaulting party; provided, however, that if such default cannot reasonably be cured within such thirty-day (30) period and if the first party is proceeding promptly and with due diligence in curing the same, the time for curing such default shall be extended for a period of time, not to exceed ninety (90) days, as may be necessary to complete such curing. Not in limitation of the foregoing, Supplier shall be in default under this Agreement if any Supplier failure of performance, act or omission results in an interruption of Customer communications using Customer Fibers for a continuous period of at least twenty-four (24) hours, or results in any two or more interruptions within any thirty (30) day period that total more forty-eight (48) hours. Any event of default may be waived at the non-defaulting party’s option. Upon the failure of a party to cure any such default after notice thereof from the other party and expiration of the above cure periods, if allowed, then the non-defaulting party may, subject to the terms of this Agreement, terminate the Agreement, cease further performance, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding the foregoing, default by one party with respect to a Dark Fiber Route Order shall not be deemed to be a default as to any other Dark Fiber Route Order.

**12.2 Disputed Amounts.** Notwithstanding any provision to the contrary in Section 12.1, either party shall have the right to dispute any amount due under this Agreement, provided that (i) the disputing party provides written notice of such dispute to the other party by the date that any such amount is due; (ii) the disputing party presents a written statement of any billing discrepancies to the other party in reasonable detail together with supporting documentation and evidence within fifteen (15) days after the date that any such amount is due; and (iii) the disputing party negotiates in good faith with the other party to resolve any such dispute within sixty (60) calendar days of the date any such amount is due. Customer shall pay disputed amounts mutually agreed upon and in favor of Supplier within thirty (30) days of the resolution of such dispute. Supplier shall credit disputed amounts mutually agreed upon and in favor of Customer on Customer’s next invoice.

## **ARTICLE XIII** **INDEMNIFICATION**

13.1 (a) Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its parents, subsidiaries and affiliates, and its and their respective directors, officers, partners, employees, agents, successors and assigns ("Indemnified Parties") from any claims, demands, lawsuits, damages, liabilities, expenses (including, but not limited to, reasonable fees and disbursements of counsel and court costs), judgments, settlements and penalties of every kind ("Claims"), that may be made: by anyone for injuries (including death) to persons or damage to property in whole or in part from the negligent acts or omissions of the Indemnifying Party or those persons furnished by Indemnifying Party, including its subcontractors (if any); provided, however, any Customer indemnification of Supplier shall be subject to limitations of Customer liability under the Nebraska Political Subdivisions Tort Claims Act.

## **ARTICLE XIV** **LIMITATION OF LIABILITY**

EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN SECTIONS 13.1(a) (INDEMNIFICATION), OR SECTION 18.1 WITH RESPECT TO AN INTENTIONAL OR GROSSLY NEGLIGENT DISCLOSURE OF CONFIDENTIAL INFORMATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ITS EMPLOYEES, SUBCONTRACTORS, AND/OR AGENTS, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE DAMAGES, OR LOST PROFITS FOR ANY CLAIM OR DEMAND OF ANY NATURE OR KIND, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF.

## **ARTICLE XV** **INSURANCE**

15.1 **Obligation to Obtain.** During the term of a Dark Fiber Route Order, the parties to such Dark Fiber Route Order shall each obtain and maintain not less than the following insurance:

- (a) Commercial General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 per occurrence and annual aggregate of \$2,000,000.
- (b) Worker's Compensation insurance complying with the laws of the State or States having jurisdiction over each employee of the respective parties.
- (c) Automobile Liability Insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage, to include coverage for all owned, non-owned, and hired vehicles.
- (d) The limit requirements stated above in Section 15.1(a), (b) and (c) may be met through a combination of primary and/or excess umbrella policies.

The limits set forth above are minimum limits and shall not be construed to limit the liability of either party.

**15.2 Policy Requirements.** Each party shall obtain and maintain the insurance policies required above with companies licensed to provide said insurance in Nebraska and rated A- or better by Best's Key Rating Guide. The other party, its Affiliates, officers, directors, and employees, and any other party entitled to indemnification hereunder shall be named as additional insureds on the policies in Section 15.1(a) and Section 15.1(c) above. Each party shall provide the other party with an insurance certificate evidencing the insurance requirements of this Article with the execution of the applicable Dark Fiber Route Order and with each policy renewal. The insurance certificate shall indicate that the other party shall be notified not less than thirty (30) calendar days prior to any cancellation. The policies provided shall be primary as respects the negligence of the named insured.

**15.3 Waiver of Subrogation.** To the extent that each insurance company is willing to provide same without additional premiums or other conditions, the parties shall each obtain from the insurance companies providing the coverages required by this Agreement a waiver of all rights of subrogation or recovery in favor of the other party and, as applicable, its members, managers, shareholders, Affiliates, assignees, officers, directors, and employees or any other party entitled to indemnity under this Agreement to the extent of such indemnity.

**15.4 Public Body Risk Pooling.** Notwithstanding anything in this Agreement to the contrary, requirements of this Article 15 as applicable to Customer shall be subject to such terms, conditions and coverages of any risk pooling of Customer with other public bodies.

## **ARTICLE XVI** **TAXES AND GOVERNMENTAL FEES**

**16.1 Customer Obligations.** Subject to Section 16.2, if Supplier is required by law to collect any federal, state or local sales, gross receipt, franchise, excise or other similar transfer tax from Customer with respect to an amount to be paid by Customer to Supplier under this Agreement, then Supplier shall bill such tax to Customer in the manner and for the amount required by law.

**16.2 Exception.** Supplier shall not bill to or otherwise attempt to collect from Customer any tax with respect to which Customer has provided Supplier with an exemption certificate.

## **ARTICLE XVII** **NOTICE**

**17.1 Notice Addresses.** Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other party as follows:

If to Customer:

City of La Vista  
Attn: Pamela A. Buethe, City Clerk

8116 Park View Boulevard  
La Vista, Nebraska 68128

with a copy to:

Thomas G. McKeon  
200 Regency One  
10050 Regency Circle  
Omaha, Nebraska 68114

If to Supplier:

Unite Private Networks, LLC  
Attn: Matthew Van Hoesen  
950 West 92 Highway, Suite 203  
Kearney, Missouri 64060  
Facsimile No.: (816)903-9401

**17.2 Notice and Delivery.** Unless otherwise provided herein, notices shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile, or when sent by overnight delivery service or registered or certified mail, the later of the day after being sent or the day delivery is first attempted as indicated by applicable routing, tracking or other documentation of the applicable carrier. A notice that is sent by facsimile shall also be sent by one of the other means set out by this Section 17.2.

## **ARTICLE XVIII** **NON-DISCLOSURE; PUBLICITY AND ADVERTISING**

**18.1 Non-Disclosure.** Except for any disclosures in conjunction with any proceeding or action of Customer at a meeting held in accordance with the Nebraska Open Meetings Act, or any disclosures related to any requests of Customer under the Nebraska Public Records Statutes or as otherwise may be made by Customer in accordance with applicable law, the non-disclosure provisions set forth as Exhibit B (“Non-Disclosure”) shall apply to this Agreement and all Dark Fiber Route Orders hereunder.

**18.2 Publicity and Advertising.** Supplier agrees to submit to Customer's corporate communications department for written approval in Customer's sole discretion all advertising, sales promotion, press releases and other publicity matters relating to a product furnished and/or the services performed pursuant to this Agreement, when Customer's name or mark (or the name or mark of any of its officials, officers, employees or Affiliates) is mentioned or language from which the connection of said name or mark may be inferred or implied. Such requests shall be sent to the address provided in Section 17.1.

**ARTICLE XIX**  
**RELATIONSHIP OF THE PARTIES**

Supplier, in performing any of its obligations hereunder, is acting solely as an independent contractor and not as an agent of any other party. Persons furnished by Supplier shall be solely the employees or agents of Supplier and shall be under the sole and exclusive direction and control of such party. They shall not be considered employees of Customer for any purpose. Supplier shall comply with all applicable federal, state and local laws, government regulations and orders, including, without limitation, laws, government regulations and orders with respect to employment. Not in limitation of the foregoing, (i) neither Supplier nor any subcontractor of Supplier shall discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability, or national origin; and (ii) Customer is a recipient of federal funds and all required contractual provisions of a recipient of federal funds shall be deemed incorporated into this Agreement by this reference and shall be binding upon the parties. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the parties or to impose upon the parties any of the duties or responsibilities of partners or joint venturers.

**ARTICLE XX**  
**FORCE MAJEURE**

Neither party shall be in default under this Agreement or a Dark Fiber Route Order with respect to any failure or delay in performing its obligations hereunder to the extent that such failure or delay is caused by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, strikes, slowdowns, picketing or boycotts, delays caused by the inaction of utilities, local exchange carriers, cities, municipalities, or other political subdivisions in granting access to rights of way, poles, or any other required items or any other circumstances beyond the reasonable control and not involving any fault or negligence of the Delayed Party (each a "Force Majeure Event"). If any such Force Majeure Event occurs, the party delayed or unable to perform ("Delayed Party"), upon giving prompt notice to the other party, shall be excused from such performance or non-performance, as the case may be, under the Agreement or the impacted Dark Fiber Route Order on a day-to-day basis during the continuance of such Force Majeure Event (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided, however, that the party so affected shall use its best reasonable efforts to avoid or remove such Force Majeure Event, and both parties shall proceed immediately with the performance of their obligations under this Agreement or the impacted Dark Fiber Route Order whenever such causes are removed or cease; and provided further, however, if a Force Majeure Event continues for thirty (30) or more days, the non-Delayed Party may elect to terminate this Agreement and all further performance.

**ARTICLE XXI**  
**RESERVED**

**ARTICLE XXII**  
**RULES OF CONSTRUCTION**

**22.1 Interpretation.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

**22.2 Cumulative Remedies; Insurance.** Except as set forth to the contrary herein, any right or remedy of Supplier or Customer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. The provisions of Article XV (“Insurance”) shall not be construed as limiting the Indemnifying Party’s obligations pursuant to Article XIII (“Indemnification”) or other provisions of this Agreement.

**22.3 No Third-Party Rights.** Nothing in this Agreement is intended to provide any legal rights to anyone not an executing party of this Agreement except under the indemnification and insurance provisions and Section 2.4 (“Affiliate Orders”).

**22.4 Agreement Fully Negotiated.** This Agreement has been fully negotiated between and jointly drafted by Supplier and Customer.

**22.5 Document Precedence.** In the event of a conflict between the provisions of this Agreement and those of any Exhibit to this Agreement, the provisions of this Agreement, shall prevail and such Exhibit shall be corrected accordingly. In the event of a conflict between the provisions of this Agreement and those of a Dark Fiber Route Order, the provisions of the Dark Fiber Route Order shall prevail and the Agreement shall be corrected accordingly.

**22.6 Industry Standards.** Except as otherwise set forth herein, for the purpose of this Agreement, construction, testing, acceptance, and maintenance practices shall be consistent with industry standards, unless a higher standard is provided in this Agreement or the Route Order.

**22.7 Cross References.** Except as the context otherwise indicates, all references to Exhibits, Articles, Sections, Subsections, Clauses, and Paragraphs refer to provisions of this Agreement.

**22.8 Limited Effect of Waiver.** The failure of either Supplier or Customer to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

**22.9 Applicable Law.** The laws of the State of Nebraska, without reference to its choice of law principles, shall govern this Agreement and all Dark Fiber Route Orders. Any legal action arising out of or relating to this Agreement or any Dark Fiber Route Order shall be

pursued in the Nebraska District Court of Sarpy County, and the parties agree that jurisdiction and venue of and in said court shall be proper and shall not be challenged.

**22.10 Severability.** If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then (i) both parties shall be relieved of all obligations arising under such provision and this Agreement shall be deemed amended to delete the invalid or enforceable provision, and (ii) the remainder of this Agreement shall be valid and enforceable.

## **ARTICLE XXIII** **ASSIGNMENT**

**23.1 Right to Assign.** Neither party shall assign any right or interest under this Agreement without the prior written consent of the other party, except as provided hereinafter. Such consent may not be unreasonably withheld, conditioned or delayed; provided, however, any such consent of Customer shall be conditioned on (i) all permitted transfers and transferees of Supplier shall be subject to this Agreement and all rights of Customer under this Agreement; (ii) after any permitted transfer, Supplier shall continue to be liable under this Agreement with any transferee. Any attempted assignment in contravention of this provision shall be void and ineffective. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. The foregoing notwithstanding, Supplier shall have the right at any time, without the prior consent of Customer, to mortgage, pledge, grant a security interest in its interest in this Agreement and/or any of Supplier's System in connection with any borrowing or financing activity of Supplier; provided, however, if the mortgagee, pledgee or holder of a security interest obtains any right, title or interest of, under or to this Agreement or the System pursuant to any foreclosure or other proceeding or action on said mortgage, pledge or security interest, said right, title, interest and any transferee shall be subject to this Agreement and all Customer's rights and transferee's performance of all requirements under this Agreement; and Supplier shall continue to be liable under this Agreement with any transferee..

## **ARTICLE XXIV** **RESERVED**

## **ARTICLE XXV** **ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

**25.1 Integration; Exhibits.** This Agreement constitutes the entire and final agreement and understanding between Supplier and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. Notwithstanding anything in this Agreement to the contrary: (i) this Agreement shall not amend or supersede the Communications Cable and Facilities Agreement between Customer and Supplier dated January 15, 2012 ("Cable and Facilities Agreement"), and said Cable and Facilities Agreement shall continue in full force and effect as originally executed; and (ii) nothing in this Agreement shall constitute or be interpreted as Customer's relinquishment, waiver or conveyance of any rights-of-way or any authority or rights of Customer with respect to any

rights-of-way within Customer's jurisdiction or control. The recitals on page 1 and Exhibits referred to herein are integral parts hereof and are made a part of this Agreement by reference.

**25.2 Amendment.** This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Supplier and Customer, and any such amendment shall be effective with respect to all Dark Fiber Route Orders, unless otherwise provided by such amendment.

**25.3 Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

**25.4 Facsimile Delivery.** This Agreement may be duly executed and delivered by a party by execution and facsimile delivery of the signature page of a counterpart to the other party, provided that, if delivery is made by facsimile, the executing party shall promptly deliver a complete counterpart that it has executed to the other party.

## **ARTICLE XXVI** **SIGNATURES**

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Supplier and Customer have executed this Agreement as of the dates set forth below.

**SUPPLIER**  
**UNITE PRIVATE NETWORKS, LLC**

By: \_\_\_\_\_  
Print Name: Matthew Van Hoesen  
Title: CFO and General Counsel  
Date: \_\_\_\_\_

**CUSTOMER**  
**CITY OF LA VISTA**

By: \_\_\_\_\_  
Print Name: Douglas Kindig  
Title: Mayor  
Date: \_\_\_\_\_

## **ATTEST**

By: \_\_\_\_\_  
Print Name: Pamela A. Buethe  
Title: City Clerk  
Date: \_\_\_\_\_

**EXHIBIT A**  
**Dark Fiber Route Order Form**

**DARK FIBER ROUTE ORDER NO. \_\_\_\_\_**  
**PURSUANT TO THE MASTER DARK FIBER LEASE AGREEMENT**

This Dark Fiber Route Order is entered into between Unite Private Networks, LLC. ("Supplier") and \_\_\_\_\_ ("Customer") as of the date of the last signature hereto and incorporates the terms and provisions set forth in the Master Dark Fiber Lease Agreement (the "Dark Fiber Lease Agreement") and the Master Maintenance Agreement (the "M Agreement") entered by and between Customer and Supplier and dated as of \_\_\_\_\_, 201\_\_. Capitalized terms used but not defined herein shall have the meaning set forth in the Dark Fiber Lease Agreement and the M Agreement. Customer agrees to be bound by and may enforce the terms and conditions of the Dark Fiber Lease Agreement and the M Agreement with respect to this Dark Fiber Route Order.

**I. CONTACT INFORMATION**

SUPPLIER NOTICE ADDRESS (LOCAL)		* CUSTOMER NOTICE ADDRESS *	
Unite Private Networks, LLC Attn: _____ 950 West 92 Highway, Suite 203 Kearney, Missouri 64060			
CONTACT: [name]	PHONE: (xxx) xxx-xxxx	CONTACT: [name]	PHONE: (xxx) xxx-xxxx
PAYMENT ADDRESS		INVOICE ADDRESS	
Unite Private Networks, LLC Attn: Christine Christiansen 950 West 92 Highway, Suite 203 Kearney, Missouri 64060			
ATTN: [name]	PH: (xxx) xxx-xxxx	ATTN: [name]	PH: (xxx) xxx-xxxx

**II. DESCRIPTION OF ROUTE**

**DARK FIBER ROUTE DESCRIPTION:** [identify location A (City, State) to location Z (City, State)]

Master Dark Fiber Lease Agreement	Route Order Number	Initial Term [provide length, i.e.:] Twenty (20) Years from Acceptance Date
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**Attached Schedules:**

Schedule 1 – Dark Fiber Route Map  
Schedule 2 – Route Description  
Schedule 3 – Route Pricing

**III. GRANT**

Upon the Acceptance Date of this Dark Fiber Route Order and subject to the terms and conditions of the Dark Fiber Lease Agreement and the M Agreement, Supplier hereby grants and conveys to Customer an exclusive Dark Fiber Lease in the specific number of Fibers stated in Schedule 3 ("Route Pricing") in the Cable over the Route depicted in Schedule 1 ("Dark Fiber Route Map") and further described in Schedule 2 ("Route Description") attached hereto.

Unite Private Networks, LLC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Customer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Schedule 1**  
**Dark Fiber Route Map**

**Map:** *[Insert Route Description here]*

*[Insert map here]*

**Legend:**

*[By way of example:]*

Blue: New Construction needed for contracted Route under this Dark Fiber Route Order

Red: Existing Supplier Network, not contracted for under this Dark Fiber Route Order

Black Houses: Segment end points

## Schedule 2

### Route Description

#### **Route Description:** *[Insert Path Description here]*

***[by way of example:]*** Supplier shall install underground high-density polyethylene conduit and fiber optic cable from the Customer's site at ***[Address Location A]*** to a splice point located at ***[Address Location Z]***. The total Route distance is approximately ***[Number of miles]*** mile(s). Supplier shall use all commercially reasonable efforts to place the Cable along the Routes set forth in Schedule 1 ("Dark Fiber Route Map") or such Routes that will include all of the locations specified in Schedule 1 or such alternative locations as may be mutually agreed upon by the parties. Supplier shall provide any resulting Schedule 1 changes to Customer as a replacement document to Schedule 1.

#### **Scope of Work:** *[Insert SOW here]*

***[by way of example:]*** Supplier shall install underground high-density polyethylene conduit and a twenty-four (24)-count fiber optic cable along the route depicted in Schedule 1 and described in Schedule 2. Supplier shall terminate ***[Number of fibers]*** Customer Fibers at an existing Fiber Distribution Panel (FDP) in ***[Address Location A]*** and install a splice case and splice ***[Number of fibers]*** Customer Fibers at ***[Address Location Z]***. Customer shall provide Supplier with access to building entrance conduit at ***[Address Location A]***. [Note, the following considerations should be included in the SOW when a specified Route is a ring path: (i) Fiber ring should physically pass through each Customer designated (MSC / POI) where possible; (ii) Dual entrances should be established with a minimum recommended separation of twenty (20) feet; (iii) Fiber ring extensions to Customer should be provisioned over physically diverse paths; (iv) Deployment of "Maintenance Fibers" by Carrier to monitor entire fiber ring.]

#### **Demarcation Points:**

- (1) [By way of example: Fiber Distribution Panel located inside Customer MSC located at (address, city, state).]
- (2) [By way of example: Splice point located at (address, city, state).]

**Schedule 3**  
**Route Pricing**

Description	Requested Route	Route Mileage	Number Of Customer Fiber Strands	Fiber Mileage	Cost per Fiber per Mile	Monthly Recurring Charge	Annual Routine Maintenance Charge	Contract Price
New Construction	Lateral from existing Supplier backbone from <i>[Location Z]</i> to <i>[Location A]</i>	<i>n.n</i>	<i>N</i>	<i>N*n</i>	<i>\$X.XX</i>	<i>\$X.XX</i>	<i>\$X.XX</i>	<i>\$X.XX</i>
						Monthly	Annual	Upfront
<b>TOTAL</b>		<b><i>XX</i></b>		<b><i>XX</i></b>		<b><i>\$X.XX</i></b>	<b><i>\$X.XX</i></b>	<b><i>\$X.XX</i></b>

**Payment Schedule:**

In accordance with Section 3.1 (“Contract Price”) of the Dark Fiber Lease Agreement and this Schedule 3 (“Route Pricing”), Customer shall pay Supplier the Contract Price as follows:

- (a) After execution of the Dark Fiber Route Order, Supplier shall invoice Customer for fifty percent (50%) of the Contract Price set forth in said Dark Fiber Route Order, and payment of such invoice shall be thirty (30) calendar days following receipt of the invoice.
- (b) Following the Acceptance Date of the Route for the Dark Fiber Route Order, Supplier shall invoice Customer for the remaining fifty percent (50%) of the Contract Price, and payment of such invoice shall be due thirty (30) calendar days following receipt of the invoice.

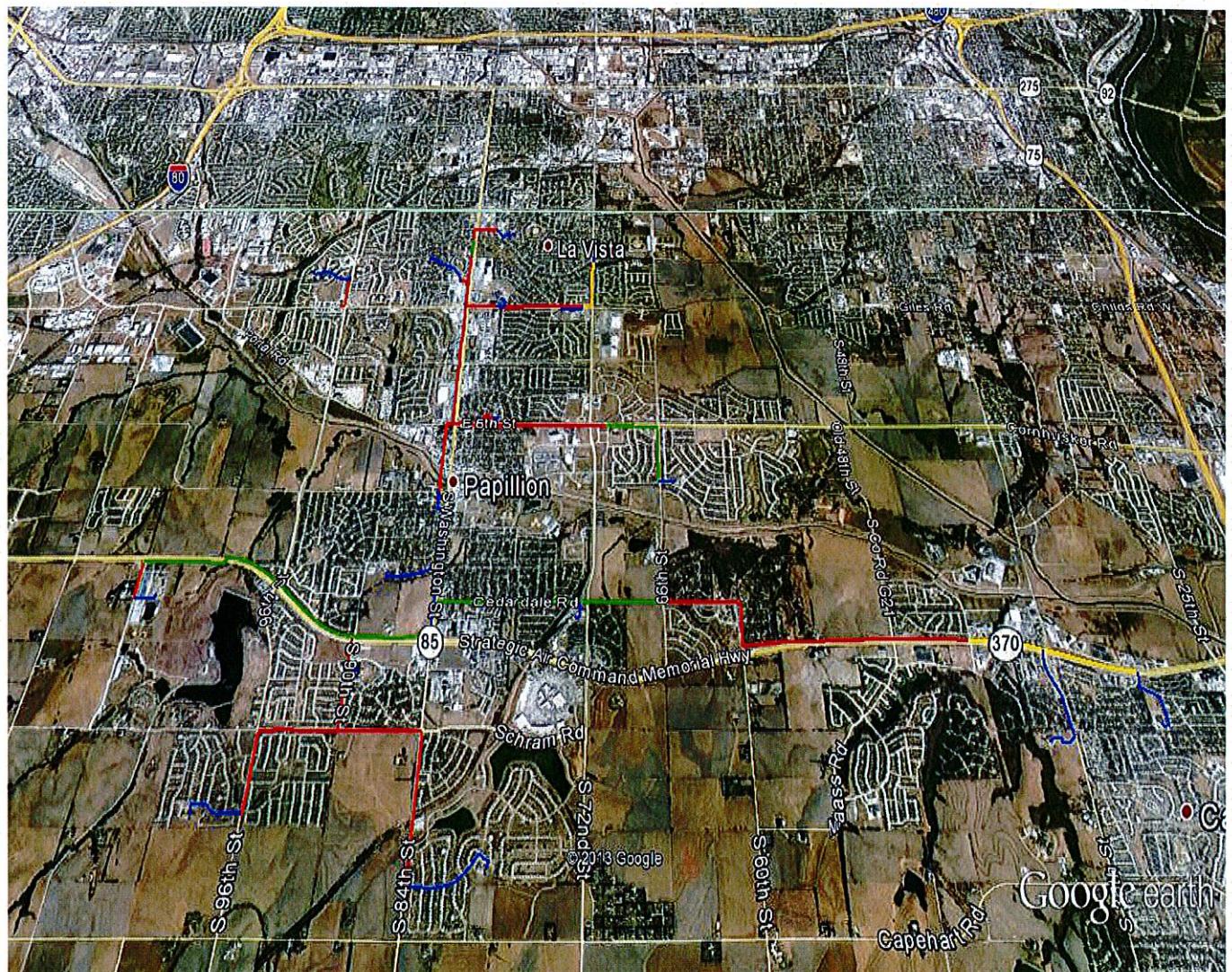
To the extent applicable, Supplier shall indicate on its first invoice to Customer any amounts associated with this Dark Fiber Route Order’s Contract Price that were previously paid to Supplier by Customer.

**EXHIBIT B**  
**Non-Disclosure**

1. To facilitate discussions, meetings and the conduct of business between the parties with respect to the matter of mutual interest which is the subject of this Agreement, it may be necessary for one party to disclose to the other technical, customer, personnel and/or business information in written, graphic, oral or other tangible or intangible form including, but not limited to, specifications, records, data, computer programs, drawings, schematics, know-how, notes, models, reports and samples. Such information may include proprietary material, as well as material subject to and protected by laws regarding secrecy of communications or trade secrets ("Confidential Information").
2. The obligations with respect to Confidential Information shall extend for a period of five (5) years following the date of initial disclosure of that Confidential Information or five (5) years beyond completion of the termination or expiration of the Agreement, whichever is greater; except, however, that Customer 's customer information shall remain confidential forever.
3. Each party acknowledges and agrees as follows:
  - a. All Confidential Information acquired by either party from the other shall be and shall remain the exclusive property of the source;
  - b. To inform the receiving party, in advance of any disclosure of Confidential Information, in non-confidential and non-proprietary terms, of the nature of the proposed disclosure, and to afford the receiving party the option of declining to receive the Confidential Information;
  - c. Information which is disclosed orally shall not be considered Confidential Information unless it is reduced to writing or to a written summary which identifies the specific information to be considered as Confidential Information, and such writing is provided to the receiving party at the time of disclosure or within thirty (30) days;
  - d. To receive in confidence any Confidential Information; to use such Confidential Information only for purposes of work, services or analysis related to the matter of mutual interest described above and for other purposes only upon such terms as may be agreed upon between the parties in writing;
  - e. To limit access to such Confidential Information to a party's employees, contractors, and agents who (i) have a need to know the Confidential Information in order for such party to participate in the manner of mutual interest described above; and (ii) are advised of the confidential nature of Confidential Information provided hereunder; and
  - f. At the disclosing party's request and to the extent permitted under applicable law, regulations and other guidance, to return promptly to the disclosing party or to destroy any copies of such Confidential Information that is in written, graphic or other

tangible or intangible form, and providing to the disclosing party a list of all such material destroyed.

4. These obligations do not apply to Confidential Information which:
  - a. As shown by reasonably documented proof, was in the other's possession prior to receipt from the disclosing party; or
  - b. As shown by reasonably documented proof, was received by one party in good faith from a third party not subject to a confidential obligation to the other party; or
  - c. Now is or later becomes publicly known through no breach of confidential obligation by the receiving party; or
  - d. Is disclosed to a third party by the source without a similar nondisclosure restriction; or
  - e. Was developed by the receiving party without the developing person(s) having access to any of the Confidential Information received from the other party; or
  - f. Is authorized in writing by the disclosing party to be released or is designated in writing by that party as no longer being confidential or proprietary.
5. Each Party may disclose Confidential Information to its Affiliates, subject to the terms and conditions set forth herein.
6. The parties agree to provide the other party with immediate notice of any actual or potential requirement of any court or agency to disclose Confidential Information. The party receiving the request for the information shall notify the source party and shall give that party an opportunity to participate in objecting to production of the Confidential Information.
7. It is agreed that a violation of any of the provisions of this Agreement will cause irreparable harm and injury to the non-violating party and that party shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining the violating party from doing or continuing to do any such act and any other violations or threatened violations of this Agreement. Absent a showing of willful violation of this Agreement, neither party shall be liable to the other, whether in contract or in tort or otherwise, for special, indirect, incidental or consequential damages including lost income or profits of any kind, even if such party has been advised of the possibility thereof. In no event shall either party be liable to the other for punitive or exemplary damages.



Colors:

- Blue = New underground bore
- Green = Over-lash aerial
- Red = New aerial
- Orange = OPPD duct
- Yellow = New underground trench