

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 16, 2019 AGENDA

Subject:	Type:	Submitted By:
FIBER OPTIC SERVICE AGREEMENT 84 TH STREET REDEVELOPMENT AREA PARKING DIST. No. 2-STRUCTURE No. 1	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER

SYNOPSIS

A resolution has been prepared authorizing the execution of an agreement between the City of La Vista and Unite Private Networks, LLC to provide two strands of dark fiber to Parking Structure No. 1 in La Vista City Centre to allow connection of communication and data facilities in the parking structure to the City's network.

FISCAL IMPACT

The monthly charge for this service will be part of the operating expense of the parking structure and will be part of the budget established for Offstreet Parking District No. 2

RECOMMENDATION

Approval

BACKGROUND

The City entered into an agreement with Unite Private Networks in 2013 to provide dark fiber connections to seven City facilities. The agreement did not require payment for initial installation costs, but required a long term commitment for 30 years with monthly costs of \$550 per facility for the first 15 years and \$275 per month per facility for the last 15 years. This agreement continues that pricing agreement with the additional monthly cost for Parking Structure No. 1 decreasing at the same time as the initial seven facilities in 2029.

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 THE INSTALLATION OF TWO (2) STRANDS OF DARK FIBER TO BE INSTALLED TO CITY CENTRE PARKING STRUCTURE NO. 1 BY UNITE PRIVATE NETWORKS, LLC.

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

WHEREAS, the City entered into a lease agreement with Unite Private Networks, LLC in 2013 to provide dark fiber connections to seven City facilities, and this current agreement continues that pricing agreement; and

WHEREAS, the monthly charge for this service will be part of the operating budget established for Offstreet Parking District No. 2;

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council hereby approve the execution of a lease agreement for the installation of two (2) strands of dark fiber to be installed to City Centre Parking Structure No. 1 by Unite Private Networks, LLC subject to review and any modifications the City Administrator determines necessary or appropriate in consultation with the City Attorney.

PASSED AND APPROVED THIS 16TH DAY OF APRIL, 2019.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk



Service Order

Dark Services - (19-21808)

Contact Information				
Unite Private Networks, LLC ("UPN") COMPANY CONTACT: Trudy Harris PHONE: (816) 336-2463 EMAIL: trudy.harris@upnfiber.com PAYMENT ADDRESS: Unite Private Networks, LLC 7200 NW 86 th Street, Suite M Kansas City, MO 64153		City of La Vista ("Customer") COMPANY CONTACT: Jeff Siebels PHONE: (402) 331-8927 EMAIL: jsiebels@cityoflavista.org BILLING ADDRESS: City of La Vista 8116 Park View Boulevard La Vista, NE 68128		
Billing Information and Service Commitment Period				
Order Type: UPN Service Order ID: Customer ID: Service Type/s: Service Term Length (beginning on date of installation): Service Order Monthly Recurring Charge: Service Order Non-Recurring Charge: Service Other Charges:		New 19-21808 Cit1404 Dark Fiber (DF) Approximately 294 months (see <i>Service Order Term</i> section below) \$550 (see <i>Monthly Recurring Charge</i> section below) \$0 \$0		
Circuit 1				
Location A Site Name: La Vista Community Center Address: 8116 Park View Boulevard La Vista, NE 68128 Site Contact: Sheila Lindberg Point of Demarcation:		Location Z Site Name: Parking District No. 2 – Structure 1 Address: (41.18359, -96.04278) La Vista, NE 68128 Site Contact: Jeff Siebels Point of Demarcation:		
Service and Pricing Schedule				
Type	Service	Term	Monthly Recurring Charge	Non-Recurring Charge
New	Circuit 1: Two (2) strands DF	Approx. 294 months	\$550	\$0
Total = \$550				
Comments: This Service Order is related to Service Order for Dark Services (SF 13-4336) executed by and between Customer and UPN on June 25, 2013 (the "Agreement"). Customer shall be responsible for all cross connects. Customer acknowledges and agrees that the Dark Fiber provided to Customer in this Service Order ("Customer Fibers") will not be accessible to Customer other than at the Location A and Z Points of Demarcation listed above.				
Monthly Recurring Charge: Customer shall be responsible for the \$550 monthly recurring charge listed above until January 31, 2029. Beginning on February 1, 2029 and continuing for the duration of the Service Order Term, Customer's monthly recurring charge under this Service Order shall be \$275.				
Service Order Term: The term of the Agreement is set to expire on January 31, 2044. The term of this Service Order shall commence on the Installation Date, be coterminous with the Agreement, and continue in effect until January 31, 2044 ("Initial Service Order Term"). Thereafter, this Service Order shall be automatically renewed for successive one (1) year periods (each such period, an "Additional Service Order Term" and, together with the Initial Service Order Term, the "Service Order Term") unless terminated by either party upon ninety (90) days' written notice to the other party prior to the end of the Initial Service Order Term or Additional Service Order Term, as applicable.				
Minimum Point of Entry and Additional Charges: Customer will meet UPN at the Minimum Point of Entry ("MPOE") unless otherwise noted above. The MPOE is the closest practical point to where the cable enters the building. In the event Customer desires the installation to occur somewhere other than the MPOE, Customer understands that there will be additional costs.				
Installation Date: Anticipated installation date shall occur approximately thirty to ninety (30-90) days after the following events have occurred: (1) the acquisition of all necessary permits, licenses, pole attachment agreements, third-party fiber, and rights of way to complete the project; and (2) the full execution of this Service Order (the "Installation Date").				

This Service Order for Dark Services includes and incorporates by reference the Additional Terms and Conditions Applying to Service Orders attached hereto (the "Agreement"). Customer and UPN agree to be bound by the Agreement. From time to time, additional Service Orders for Dark Services may be entered into between UPN and Customer which shall incorporate the terms and conditions of the Agreement.

Unite Private Networks, LLC:

City of La Vista:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



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Standard Terms and Conditions Applying to Service Orders

1. **Ordering and Conveyance.** In the event Customer desires to order dark fiber services from UPN, Customer and UPN shall execute a service order ("Service Order") in a manner set forth in Section 3 below. Upon the full execution and acceptance of a Service Order, UPN grants and conveys to Customer a lease to use the specific strands of dark fiber ("Customer Fibers") designated by UPN within the Service Order. All Service Orders entered into between Customer and UPN shall incorporate and be governed by these Additional Terms and Conditions Applying to Service Orders (hereinafter referred to as the "Agreement"). UPN does not convey or grant legal title to any real or personal property, including the Customer Fibers, the related cable, or any other equipment or related UPN network facilities. UPN shall not provide or be responsible for attaining on behalf of Customer any equipment used to transmit capacity over or "light" fibers. Customer's use of Customer Fibers shall be limited to Customer. Customer may not assign, lease, or allow any other party the right to use the fibers, the cable, or the system without UPN's express written consent. Such restriction includes, but is not limited to, the ability to resell the Customer Fibers as a "Dark Fiber" service. Any other use by Customer shall be grounds for immediate termination by UPN for cause.
2. **Acceptance.** UPN shall issue a Service Commencement Letter (as "Service Commencement Letter" is hereinafter defined) to Customer promptly upon completing the installation and testing of the Customer Fibers. Customer shall either accept or reject the Customer Fibers within five (5) days of UPN issuing the associated Service Commencement Letter. If Customer rejects the Customer Fibers, Customer shall provide a written description reasonably detailing failure of the Customer Fibers. UPN shall then re-test the Customer Fibers and issue another Service Commencement Letter. This process shall continue until the Customer Fibers meet the standards set forth in Section 31 of this Agreement. For clarity, Customer shall be deemed to have provided its "Acceptance" of the Customer Fibers in the event that (i) Customer provides written acknowledgement within the designated five (5) day period that the Customer Fibers are in material compliance with this Agreement and it accepts the Customer Fibers or (ii) Customer fails to accept or properly reject the Customer Fibers within the designated five (5) day period. A "Service Commencement Letter" means the written communication sent from UPN to Customer to the physical address or email address listed in Section 24, or as otherwise provided by Customer, informing Customer that the Customer Fibers have been installed and are available for Customer's use.
3. **Dark Fiber Service Orders.** Each Service Order entered into between Customer and UPN shall, at a minimum, identify the (i) route(s) and associated end point locations; (ii) Point(s) of Demarcation (as "Point(s) of Demarcation" is defined in Section 6); (iii) number of Customer Fibers to be leased to Customer; (iv) Service Order term; (v) monthly recurring charges; (vi) non-recurring charges; (vii) Customer and UPN contact information; and (viii) anticipated installation timeframe. Subject to this Agreement, UPN's obligation to lease Customer Fibers to Customer and Customer's obligation to lease Customer Fibers from UPN shall only arise upon a validly executed Service Order signed by both parties.
4. **Pricing.** Monthly recurring charges ("MRC"), non-recurring charges ("NRC"), and other charges for the Customer Fibers shall be set forth in each Service Order.
5. **Payment.** Subject to Section 20, Customer shall pay all undisputed charges pursuant to Section 4 by check or wire transfer of immediately available funds to the account designated by UPN, unless otherwise agreed to by the parties. All undisputed charges shall be paid by Customer within thirty (30) calendar days following receipt of an invoice from UPN but no earlier than thirty (30) days after the full execution of the applicable Service Order. UPN may also choose to invoice the NRC at the same time it charges Customer for its first MRC. Any undisputed portion of an invoice not paid by the applicable due date shall be overdue and Customer shall incur a fee of 1.5% per month, or the maximum amount permitted by law, until the undisputed portions of the invoice are paid in full. All MRCs shall be invoiced in advance on the first day of each month. If the Service Order Term commences on a day other than the first day of the month, Customer shall be invoiced on the first day of the following month and the first invoice shall include the pro-rated amount of the prior month's MRC in addition to the current month's MRC. By way of example only, if Customer's service begins on September 20, Customer will receive its first invoice on October 1 and this invoice will include a full month's MRC for October in addition to the pro-rated ten (10) days' MRC for September.
6. **Points of Demarcation and Building Access.** "Point(s) of Demarcation" means the physical point where UPN's obligation to bring and terminate the Customer Fibers ends. UPN shall only be responsible for construction of the Customer Fibers and maintenance activities on the Customer Fibers to the applicable Point of Demarcation. Unless otherwise specified on a Service Order, the Point of Demarcation shall be UPN's zero manhole within the public right-of-way. If Customer requests extension of the Point of Demarcation beyond the zero manhole in the public right-of-way, such extension shall be codified within the applicable Service Order and may carry an additional NRC. Where the Point of Demarcation extends to the premises where Customer is located, Customer acknowledges that it will assist UPN in procuring the necessary building entrance agreements and property rights ("Access Rights") for UPN to have access and permission to enter the locations noted on the applicable Service Order. Customer understands that any delay in receiving the Access Rights may cause a corresponding delay in the requested Installation Date listed on the Service Order. Customer shall be responsible for all costs (initial and on-going) incurred by UPN related to these Access Rights, including, but not limited to any charges or fees imposed on UPN by the applicable building owner or landlord. In the event Customer is unwilling or unable to pay for any additional charges or fees imposed by the building owner or landlord, UPN shall have the option to cancel this Service Order and Customer shall be responsible for payment of the Early Cancellation Fees pursuant to Section 15.
7. **Routine Maintenance.** During the term of this Agreement, UPN shall perform all routine and emergency maintenance for all Customer Fibers conveyed under a Service Order. UPN shall use its best efforts to perform routine maintenance between the hours of 12:00 AM and 6:00 AM, local time, to minimize any potential disruptive impact on the continuity or performance level of the Customer Fibers. Notwithstanding the preceding, UPN may perform maintenance at any time for purposes such as 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 that could affect the Customer Fibers or UPN's network.
8. **Notice of Maintenance.** UPN shall provide Customer with telephone, facsimile, or written notice of all non-emergency planned network maintenance 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 on the Customer Fibers. If UPN's planned activity is canceled or delayed, UPN shall promptly notify Customer and comply with this Section 8 to reschedule any delayed maintenance activity.
9. **Notice of Damage.** Customer shall promptly notify UPN of any matters pertaining to any damage or impending damage to or loss of the use of the Customer Fibers or UPN's network that are known to Customer and that could reasonably be expected to adversely affect the Customer Fibers or UPN's network. UPN shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the use of the Customer Fibers that are known to it and that could reasonably be expected to adversely affect the Customer Fibers.
10. **Notice to Attach Electronics and Equipment Interference.** Subject to UPN's consent, which shall not be unreasonably withheld, Customer may attach electronics to the Customer Fibers. Customer shall provide UPN no less than ten (10) days' written notice of its intent to attach electronics. Customer will notify UPN of the type of electronics, detailing optical wave, and bandwidth associated with such electronics. The ability of any Customer-provided electronics to interfere with UPN's network, UPN-related

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facilities, or other UPN third party customer fibers shall be grounds for withholding consent. Neither Customer nor UPN shall use equipment, technologies, or methods of operation that interfere in any way with or adversely affect UPN's network, the Customer Fibers, or the use of the UPN's network by other UPN third party customers or their respective fibers, equipment, or facilities associated therewith. Each party shall take all reasonable precautions to prevent damage to UPN's network, the Customer Fibers, or the use of UPN's network by other UPN third party customers. If Customer's equipment has an adverse effect on UPN's network, Customer must remove such equipment immediately and no later than eight (8) hours after receipt of notice, either written or verbal, from UPN.

11. **Liens.** UPN shall not cause or permit any of Customer's rights under this Service Order to become subject to any mechanic's, materialmen's, vendor's or any similar lien, or tax lien. Customer acknowledges that it has no title to and shall not in any way encumber the Customer Fibers, cable, or any property that is the subject of the applicable Service Order not owned by Customer.
12. **Term.**
 - (a) **Agreement Term.** The term of this Agreement shall commence on the full execution of the first Service Order between UPN and Customer and shall continue in effect for sixty (60) months ("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 by either party upon ninety (90) days' written notice to the other party prior to the end of the Initial Term or Additional Term, as applicable. For clarity, the Term of this Agreement shall continue so long as there is an active and related Service Order in effect at the time.
 - (b) **Service Order Term.** The term of each Service Order shall commence on the Installation Date listed within each Service Order and shall, subject to Section 14 (Early Termination), Section 15 (Early Cancellation), and Section 19 ("Default and Cure"), expire after the period set forth in the applicable Service Order as the initial term (the "Service Order Initial Term"). Thereafter, the Service Order shall automatically renew for successive one (1) year periods (each such period, an "Additional Service Order Term" and, together with the Service Order Initial Term, the "Service Order Term") unless and until terminated by either party upon ninety (90) days' written notice to the other party prior to the end of the Service Order Initial Term or an Additional Service Order Term, as applicable. Notwithstanding the preceding, if a Service Order contains multiple circuits, Customer shall be invoiced for its first monthly recurring charge on the Installation Date of the first circuit. Each subsequent monthly recurring charge shall be pro-rated based on the number of circuits that have been installed until all circuits have been installed, at which time the monthly recurring charge shall be the total monthly recurring charge listed in the Service Order and this total monthly recurring charge shall continue for the entire Service Order Term listed in the Service Order. For clarity, on a multi-circuit Service Order, the Service Order Term shall commence upon the installation of all circuits.
13. **Porting.** Upon UPN's prior written approval and at UPN's sole discretion, Customer shall have the option to port the Customer Fibers to a new location and UPN shall waive any applicable early termination charges so long as:
 - (i) the ported location is On-Net, meaning UPN will incur no construction or related costs to provide the dark fiber service to the ported location;
 - (ii) Customer and UPN enter into a replacement Service Order for a term equal to or greater than the term remaining on the Service Order being replaced;
 - (iii) The replacement Service Order contains the same or greater monthly recurring charges as the Service Order being replaced; and
 - (iv) Customer pays a non-recurring charge to cover any splicing or other costs related to the replacement Service Order, if applicable.

Any ported service shall be codified in an amendment, Service Order, or similar documentation signed by both parties.

14. **Early Termination.** In the event that, after Acceptance of a Service Order or a portion of the Customer Fibers, UPN terminates any Service Order for Customer Default (as "Customer Default" is defined in Section 19(a)) or Customer terminates any Service Order for any reason other than for UPN Default (as "UPN Default" is defined in Section 19(b)) through Customer's rights granted under Section 19(b), Customer shall pay an early termination fee to UPN which shall be equal to (i) 100% of the remaining monthly recurring charges plus (ii) any waived or otherwise unpaid NRCs or special construction charges, plus (iii) any fees payable to third parties and attributable to the terminated services, if any, to the extent such fees are not captured by the amounts in subsection (i) of this section, (the "Early Termination Liability" or "ETL"). This ETL shall be due and payable within ten (10) days of the date of an invoice for the same. Customer acknowledges that the ETL set forth in this Section 14 is a reasonable estimate of damages to be suffered by UPN as a result of the termination of a Service Order, which amounts are impossible or extremely difficult to ascertain, and that the ETL is not intended as a penalty but as liquidated damages.
15. **Early Cancellation.** In the event that, subsequent to the execution of a Service Order but prior to Acceptance, UPN cancels or terminates a Service Order due to Customer Default, UPN cancels or terminates a Service Order for Customer's failure to attain Access Rights pursuant to Section 6, or Customer cancels or terminates the Service Order for any reason other than for UPN Default ("Early Cancellation"): (i) UPN may immediately stop work without further notice to Customer; (ii) such services shall terminate and Customer shall not be entitled to a refund of any prior consideration paid; (iii) Customer shall immediately reimburse UPN for any third-party termination charges incurred by UPN as a result of such Early Cancellation; (iv) Customer shall pay an amount equal to fifty percent (50%) of all remaining monthly recurring charges for the full term of the Service Order, which shall be immediately due and payable to UPN by Customer; and (v) UPN shall owe Customer no further duties, obligations, or consideration with regard to the terminated Service Order. Customer acknowledges that the Early Cancellation set forth in this Section 15 is a reasonable estimate of damages to be suffered by UPN as a result of the cancellation of a Service Order, which amounts are impossible or extremely difficult to ascertain, and that the Early Cancellation is not intended as a penalty but as liquidated damages.
16. **Relocation Procedures.** If UPN 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 Customer Fibers or any of the facilities used to furnish the Customer Fibers to Customer, UPN shall provide Customer sixty (60) calendar days' prior written notice of any such relocation, if possible. UPN shall utilize commercially reasonable efforts, in coordination and cooperation with Customer, to accomplish the relocation. If the relocation of Customer Fibers is necessitated solely by UPN, UPN shall be responsible for the cost of such relocation. If the relocation of the Customer Fibers is necessitated by Customer, Customer shall be responsible for the cost of such relocation. If the relocation of the Customer Fibers is necessitated by a third party with legal authority, Customer shall pay its Proportionate Share (as "Proportionate Share" is hereinafter defined) of the costs. "Proportionate Share" means the percentage determined by dividing the total number of the Customer Fibers in the applicable UPN cable by the total number of fibers in the UPN cable.
17. **Condemnation and Eminent Domain.** In the event that any portion of the Customer Fibers becomes the subject of a proceeding by any governmental agency or other party having the power of eminent domain for public purpose or use, UPN and Customer 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 that are subject to the condemnation or eminent domain proceeding.

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18. Termination for Lack of Rights. UPN may terminate any affected Service Order without liability to Customer if:

- (i) UPN's franchise authority is cancelled or terminated for the route(s) set forth in the Service Order;
- (ii) UPN is prohibited from furnishing the Customer Fibers by regulation, statute, court order, or ruling by the Federal Communications Commission, or any other federal, state or local governmental authority;
- (iii) Customer's lease or use of the Customer Fibers would cause a forfeiture of the rights of UPN to occupy the property where such Customer Fibers, or other UPN facilities, are located;
- (iv) Customer or its customer's equipment, or anyone acting on their behalf, interferes with the operational integrity of the UPN system; or
- (v) UPN's pole attachment/conduit use rights are terminated or become subject to such restrictions or conditions that continuation of this Agreement is impracticable or prohibited.

Upon occurrence of any of the foregoing, UPN shall have the right to terminate this Agreement upon sixty (60) days' notice without incurring liability to Customer; provided, however, that Customer shall be entitled to a prorated refund (based on the number of days remaining in the then-current Service Order Term or over the number of days in such Service Order Term) of prepaid rental charges, if applicable.

19. Default and Cure.

(a) Customer Default. Except as set forth in Section 20 below, Customer shall be in default ("Customer Default") under this Agreement and/or Service Order in the event of any of the following:

- (i) Customer fails to make a payment of any undisputed amount required under a Service Order and such failure continues for more than fifteen (15) days after Customer receives written notice of such failure from UPN; or
- (ii) Customer fails to comply with any material obligation, agreement, term, or provision of this Agreement or Service Order and such failure continues for more than thirty (30) days after receipt of written notice of such failure from UPN; provided however, that if such default cannot reasonably be cured within thirty (30) days and if Customer is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, not to exceed ninety (90) days, as may be necessary; or
- (iii) Customer's use of a Service will violate any law or cause UPN to violate any law; or
- (iv) Customer fails to remedy any Customer equipment inference within the timeframes set forth in Section 10.
- (v) Customer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or
- (vi) Customer becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, and such petition or proceeding is not dismissed within sixty (60) days of filing.

(b) UPN Default. UPN shall be in default ("UPN Default") under this Agreement in the event of any of the following:

- (i) UPN fails to comply with any material obligation, agreement, term, or provision of this Agreement or Service Order and such failure continues for more than thirty (30) days after receipt of written notice of such failure from Customer; provided however, that if such default cannot reasonably be cured within thirty (30) days and if UPN is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, not to exceed ninety (90) days, as may be necessary; or
- (ii) UPN becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or
- (iii) UPN becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, and such petition or proceeding is not dismissed within sixty (60) days of filing.

Any event of default may be waived at the non-defaulting party's option. Upon the failure of a party to cure a default after notice thereof from the other party and expiration of the above cure periods, the non-defaulting party may, subject to the terms of this Agreement, terminate the affected Service Order and/or pursue any remedies it may have under applicable law or principles of equity relating to such default. Notwithstanding the foregoing, default by one party with respect to a Service Order shall not be deemed to be a default with respect to another Service Order.

20. Disputed Amounts. Notwithstanding any provision to the contrary in Section 19, if Customer disputes any portion of an invoice, Customer must pay the undisputed portion of the invoice by the due date and submit a written claim reasonably documenting all reasons for disputing the remaining amount. After UPN's receipt of such claim, the parties will undertake a good faith investigation of the disputed charges. At the conclusion of the investigation, any amount mutually agreed upon by the parties will become immediately due and payable by Customer. Unless a claim is submitted in this manner and received by UPN within thirty (30) days from the date the invoice is issued, Customer waives all rights to dispute such charges, unless otherwise provided by law.

21. Indemnification. Each party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party, its directors, officers, employees, representatives, members, partners, trustees, and affiliates (collectively, the "Indemnified Party") from and against all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorney's fees) resulting from any third party claim, demand, suit, action, judgment, loss, or proceeding brought against the Indemnified Party for (a) personal injury, including death; (b) damage to any personal or real property; (c) any unauthorized use of the facilities of the Indemnified Party; or (d) a violation of any United States intellectual property right including patents, copyrights, trademarks, or service marks, all of which must be established under United States law, arising directly or indirectly from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, officers, employees, contractors, representatives, or agents. Customer shall indemnify, defend, and hold harmless UPN, its directors, officers, employees, representatives, members, partners, trustees, and affiliates from and against all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorney's fees) resulting from any claim, demand, suit, action, judgment, loss, or proceeding brought against UPN or its directors, officers, employees, representatives, trustees, and affiliates for any breach of UPN's Acceptable Use Policy ("AUP").

22. Limitation of Liability. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN SECTION 21 (INDEMNIFICATION), SECTIONS 39 TO 41 WITH RESPECT TO AN INTENTIONAL OR GROSSLY NEGIGENT DISCLOSURE OF CONFIDENTIAL INFORMATION, OR CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER PARTY RELATED TO OR IN CONNECTION WITH THIS SERVICE ORDER SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO UPN IN THE PRIOR SIX (6) MONTH PERIOD UNDER SERVICE ORDERS ENTERED INTO PURSUANT TO THIS AGREEMENT AND EFFECTIVE AS OF THE DATE THAT THE LIABILITY WAS INCURRED. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS,



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EMPLOYEES, MEMBERS, PARTNERS, TRUSTEES, SERVANTS, REPRESENTATIVES, AGENTS, AFFILIATES, OR PARENT COMPANIES BE LIABLE FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, THE COST OF REPLACEMENT SERVICES, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN THE EVENT OF ANY CLAIM THAT MAY BE BROUGHT BY CUSTOMER, CUSTOMER COVENANTS TO SEEK SATISFACTION OF SUCH CLAIM AGAINST ONLY UPN AND NOT AGAINST ANY TRUSTEE OF UPN.

23. **Taxes and Governmental Fees.** In the event UPN is assessed taxes, charges, or fees (hereinafter "taxes") related to the construction, installation, and/or services being provided to Customer under a Service Order, UPN shall bill such taxes to Customer in the manner and for the amount required by law. These taxes shall include and are not limited to federal, state or local sales, gross receipts, occupation, franchise, governmental assessments, regulatory charges, state and federal USF charges, excise, or other similar transfer taxes. UPN shall not bill to or otherwise attempt to collect from Customer any tax with respect to which Customer has provided UPN with a valid exemption certificate. For clarity, taxes shall not include taxes on UPN's income.

24. **Notice Addresses.** All notices and communications concerning this Agreement or applicable Service Order shall be in writing and addressed to the other party as follows:

If to Unite Private Networks:

7200 NW 86th Street, Suite M
Kansas City, MO 64153
Attn: Legal Department

If to Customer:

City of La Vista
8116 Park View Boulevard
La Vista, NE 68128

If Customer's notice address information is not listed within this Agreement, the notice address shall be the address listed in the applicable Service Order.

Any notice or communication required or permitted to be given hereunder shall be in writing and may be delivered by hand, deposited with a nationally recognized overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party indicated above, or to such other address as either party may notify the other in writing from time to time. Such notice will be deemed to have been given as of the date given by hand or facsimile confirmation, the day after deposit with a nationally recognized overnight courier, or five (5) days after it was mailed.

25. **Access and Splicing.** Customer shall only have access to the Customer Fibers at the Location A and Location Z Points of Demarcation listed in the applicable Service Order. In order to maintain the integrity of UPN's cable and network, UPN, or a contractor operating under UPN's direction, shall perform all splicing required on the Customer Fibers. Standard splicing associated with the Services provided in each Service Order shall be accounted for within the MRC and/or NRC of the applicable Service Order. Any additional splicing not anticipated or not accounted for at the time an applicable Service Order is executed ("Additional Splicing") shall be performed by UPN and Customer shall be responsible for the actual cost of splicing which shall include, but not be limited to, all necessary hardware, permitting, engineering and installation labor, plus twenty-one percent (21%). If Customer desires future expansion at splice points other than at the Location A and Z Points of Demarcation listed in a Service Order, then Customer must request such future expansion from UPN. UPN will grant or deny such request in its sole discretion and complete any splicing and related Customer Fiber access work. Customer acknowledges that access rights to the Customer Fibers at any new splice points may carry additional MRC and/or other charges and shall be memorialized in a service order or other similar documentation signed by both parties.

26. **Force Majeure.** Neither party shall be in default under this Agreement or a Service 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, third party fiber cuts, 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, upon giving prompt notice to the other party, shall be excused from such performance or non-performance, as the case may be, under the applicable Service 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 affected party shall use commercially 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 Service Order upon removal of the Force Majeure Event.

27. **Assignment.** Neither party may assign or otherwise transfer this Agreement and/or Service Orders or its rights or obligations under this Agreement and/or any associated Service Order without the prior written consent of the other party, said consent not to be unreasonably withheld, conditioned, or delayed. Any attempted assignment in contravention of this provision shall be null and void. However, either party may at any time, without consent but on written notice to the other party, assign this Agreement and/or Service Orders and all of its rights and obligations under this Agreement and/or Service Orders to (i) any Affiliate (as "Affiliate" is hereinafter defined), or (ii) a person, firm, corporation, partnership, association, trust or other entity which purchases all or substantially all of its assets whether via merger, sale, stock purchase, or other similar equity arrangement. This Agreement and/or Service Order shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. UPN shall have the right at any time, without the prior consent of Customer, to mortgage, pledge, or grant a security interest in this Agreement, any related Service Order, or any of UPN's system in connection with any borrowing or financing activity of UPN. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this section, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

28. **Warranties Relating to Agreement Validity.** In addition to any other representations and warranties contained in this Agreement, UPN and Customer each represent and warrant to the other 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 all related Service Orders and (b) its execution of and performance under this Agreement and all related Service Orders shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body.

29. **Agreement Fully Negotiated.** This Agreement and any related Service Order have been fully negotiated between and jointly drafted by UPN and Customer.



Service Order

Dark Services - (19-21808)

30. **Order of Precedence.** In the event of a conflict between the provisions of this Agreement and a Service Order, the provisions of the Service Order shall prevail.
31. **Industry Standards.** Except as otherwise set forth herein or in the applicable Service Order, construction, testing, acceptance, and maintenance practices shall be consistent with industry standards as determined by UPN in its sole discretion.
32. **Limited Effect of Waiver.** Any waiver or failure to enforce a provision of this Agreement or any Service Order shall not be construed as a general waiver or relinquishment of the provision.
33. **Applicable Law.** The domestic laws of Missouri, without reference to its choice of law principles, shall govern this Agreement and all Service Orders.
34. **Severability.** If any term or provision of this Agreement or associated Service Order is, to any extent, 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 and/or the applicable Service Order shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent, and (ii) the remainder of this Agreement and/or the applicable Service Order shall be valid and enforceable.
35. **Integration.** This Agreement constitutes the entire and final agreement and understanding between UPN and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which have no further force or effect. This Agreement may be supplemented with additional provisions as listed or described within a Service Order.
36. **Amendment.** This Agreement and any Service Order may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of UPN and Customer. Any amendment specific to this Agreement shall be effective with respect to all existing and future Service Orders, unless otherwise provided by such amendment.
37. **Counterparts.** This Agreement and any Service Order may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
38. **Facsimile Delivery.** This Agreement and any Service Order may be duly executed and delivered by facsimile of the signature page of a counterpart to the other party. If delivery is made by facsimile, the executing party shall promptly deliver a complete executed counterpart to the other party.
39. **Confidential Information.** For the purposes hereof, "Confidential Information" shall include any and all information that either party holds as confidential or proprietary, including, without limitation, (i) all technical information, including, without limitation, product data and specifications, know-how, formulae, software, source codes and other software information, processes, inventions, research projects, derivative works, and product development; (ii) all business information of or relating to either party, including, without limitation, accounting and financial information, sales and marketing information, research, investment analyses, investment strategies and techniques, investment transactions and holdings, plans or strategies, processing, equipment designs, clients, personnel, shareholders and information concerning funds and clients advised by either party, "know-how", data and material used or licensed by either party, including computer software, programming, research, financial information and analyses and the like, and documentation relating thereto; (iii) employee or customer information of either party; (iv) either party's confidential information disclosed to the other by third parties; (v) rates, terms, or other information regarding this Agreement, and (vi) any information which a reasonable person would deem to be confidential. Neither party shall disclose any of the other party's Confidential Information to any third party, or use any of the other party's Confidential Information for any purpose other than the performance or receipt of services hereunder. Notwithstanding the foregoing, either party (the "Discloser") may disclose Confidential Information (a) to its attorneys, accountants, consultants, or professional advisors on a "need to know basis" provided that an agreement between the third party and the Discloser to hold such information confidential is first obtained, and (b) as required in connection with any litigation or arbitration matters arising out of this Service Order. In addition, neither party will use the other party's name or the name(s) of any of the other party's product(s) or service(s) publicly without that party's prior written consent. Each party's Confidential Information shall remain its property and shall be either returned to such party or destroyed promptly upon the termination of this Service Order or at such party's earlier request. If Confidential Information is destroyed, the destroying party must certify to the destruction. The recipient of Confidential Information (the "Recipient") shall not appropriate such Confidential Information for its benefit or the benefit of any third party.
40. **Obligation to Disclose.** The Recipient will promptly notify the Discloser if the Recipient receives a demand from a third party for Confidential Information and the Recipient shall not disclose the same to such third party without the prior written consent of the Discloser, except as otherwise permitted herein or required by law. If the Recipient believes that it is legally required to disclose any of the Discloser's Confidential Information, the Recipient will not disclose such Confidential Information until the Recipient has notified the Discloser and the Discloser shall be entitled to seek a protective order or other appropriate remedy. In the event that the Recipient is required by law to disclose any Confidential Information, the Recipient will furnish only the portion of the Confidential Information that is legally required and will exercise commercially reasonable efforts to obtain a protective order or other reliable assurance that the Confidential Information will be treated as confidential upon terms substantially the same as contained in this Service Order.
41. **Exclusions.** Confidential Information shall not include information that is (i) proven to be previously known or in the possession of the Recipient at the time of receipt from the Discloser; (ii) publicly available or otherwise in the public domain by means other than unauthorized disclosure; (iii) proven to be independently developed by or on behalf of the Recipient without use of the Discloser's Confidential Information; (iv) rightfully obtained by the Recipient from a third party without restriction and without breach of a similar agreement; or (v) released by the Discloser to any third party without restrictions.