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LANCASTER COUNTY CLERK

FIBER AND CONDUIT SHARING AGREEMENT

THIS FIBER AND CONDUIT SHARING AGREEMENT ("Agreement") is entered into this ____ day of _____, 2011, by and among the City of Lincoln, a Municipal Corporation (hereinafter referred to as "City"), Lancaster County (hereinafter "County"), Information Services, a division of the Finance Department of the City of Lincoln (hereinafter referred to as "IS"), Engineering Services, a division of the Public Works and Utilities Department of the City of Lincoln (hereinafter referred to as "ES"), the District Energy Corporation (hereinafter referred to as "DEC"), and Unite Private Networks, LLC, a Missouri corporation (hereinafter referred to as "UPN").

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WHEREAS, the parties desires to construct, install, operate and maintain certain Conduits, Fibers and other appurtenances within public right of way; and

WHEREAS, the five (5) parties have agreed to jointly share in the costs of installing the Conduits, Fibers and other appurtenances associated with this project; and

WHEREAS, the parties have agreed to be bound by the terms and conditions set forth herein which shall govern the uses of the public rights of way, and the Conduits and Fiber described above;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and mutual promises set forth herein, the parties agree as follows:

Article I - Definitions

As used in this Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this Agreement, the word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this Agreement.

1. "Affiliate" means any person or entity that directly or indirectly controls or is controlled by or is under common control with a party to this Agreement.
2. "Cable" shall mean all fiber optic cable now or hereafter owned or controlled by UPN located within the Jurisdiction as now or hereafter constituted.
3. "Conduit" shall mean the type and location of conduit used and installed as provided in this Agreement and Exhibit "A."
4. "Facilities" means all physical components of the network located within the

Jurisdiction, including without limitation cable, poles, wires, cables, pipes, underground conduits, ducts, equipment cabinets, manholes, handholes, vaults, fiber optic cables and devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.

5. "Fibers" shall mean the number and type of optical fibers at all locations as provided in this Agreement and Exhibit "A."

6. "Jurisdiction" shall mean within the corporate boundaries of the City of Lincoln as now or hereafter constituted.

7. "Rights of Way" shall mean City streets, roads, alleys, sidewalk areas and other dedicated rights of way within the Jurisdiction, together with dedicated utility easements within the Jurisdiction and easements deeded to the City for utility purposes. The term shall not include any other property owned or leased by the City for any other proprietary, public or municipal use.

8. "Term" shall mean twenty (20) years from the date hereof.

9. "Underlying Rights" shall mean all deeds, leases, easements, pole sharing agreements and other interests by which UPN is authorized to install, operate and maintain its private network upon any real or personal property, whether public or private.

Article II – ROW

1. Subject to the parties compliance at all times with all of the terms and conditions of this Agreement, all of City's ordinances, and all applicable local, state and federal laws, and further subject to the City's lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit and building code requirements) and the City's prior and superior right to usage for municipal purposes, City hereby grants to the other parties herein, insofar as it has or may have the requisite power and authority to do so, permission to make reasonable use of the Rights of Way and the Conduit, pursuant to Exhibit A, to construct, install, operate and maintain the Facilities within the Jurisdiction; provided, however, that with respect to state highways, the parties must separately obtain consent from the Nebraska Department of Transportation.

2. The permissions granted herein to make reasonable use of the Rights of Way shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right to make or grant a similar use of the Rights of Way to any other person or persons.

3. The City retains the following rights in regard to this Agreement:

(a) To terminate this Agreement for misuse, non-use or failure of UPN or any other party to comply with the provisions hereof.

(b) To use, control and regulate the use of the City streets, roads, easements,

other public places and the Rights of Way, and the space above and beneath the same; and

(c) To require the removal or relocation of any of the Facilities from the Rights of Way if necessary, in the reasonable judgment of the City, for any public or municipal purpose or project, at the parties' sole cost and expense (or its proportionate share of expense if the parties shares Facilities with City).

(d) The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property, whether in the Rights of Way or outside of the Rights of Way.

Article III - Scope; Prohibition Against Providing Cable Services

This Agreement confers only the right to make reasonable use of the Rights of Way for UPN's provision of its private network or the other public parties' purposes and it is expressly conditioned that the no party shall operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer to provide "cable services" as that term is defined under federal law (47 U.S.C. §522(6)), without proper local, state, and federal authorization, as required by law.

Article IV - Sales and Use Tax

1. UPN agrees to obtain a sales and use tax license from the City and to comply with all provisions.

2. To the extent UPN's sale of private network services or sale or lease of Fiber to its customers is taxable, UPN shall collect such taxes from its customer and promptly remit same to the appropriate governing authorities.

3. To the extent UPN provides telecommunication services, UPN shall be subject to the City's Telecommunication Occupation tax, 3.24.080 et.seq.

Article V - Use of Rights of Way

1. Facilities shall be located, installed and maintained so that none of the Facilities endanger the lives, health or safety of persons, or interfere with any public improvements the City or other governmental entities or other parties (including any storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Facilities hinder or obstruct the free use of the streets or other public ways. All Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. All construction, excavation, maintenance and repair work done by the parties

shall be done in a good workmanlike and expeditious manner which minimizes the inconvenience to the general public and individuals. All such construction, excavation, maintenance and repair work done by or on behalf of the parties shall comply with all applicable codes of the City and the State of Nebraska. The City shall have the right to inspect all construction or excavation work to insure compliance with applicable codes and permits, and may order corrective work when necessary.

3. The installation, maintenance, renovation and replacement of Facilities by the parties shall be subject to regulation by City through LMC 5.17, including but not limited to, (a) the location of Facilities in or upon the streets, alleys and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, street lights, traffic signals, and all other municipal or authorized public use of the Rights of Way. The City's Director of Public Works may direct and require the location of Facilities within a defined telecommunications corridor within any street or other Right of Way or otherwise at a specific location to minimize interference with other facilities or utilities. All Facilities shall be installed and maintained in such manner as to minimize interference with trees, natural features and vegetation.

Article VI - Additional City Regulation

1. The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property.

Article VII - Coordination and Conduit/Pole Sharing

In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, holders of permits and other interests needing to locate or maintain Facilities in the Rights of Way for the benefit of the public, it is imperative that any Conduit sharing be encouraged to the greatest extent possible. In furtherance of such purposes, the parties agree, wherever feasible, that it shall cooperate with City in placing Conduit within the Rights of Way and in sharing unused space within underground Conduits owned by the parties, and upon any poles or other above ground Facilities owned by the parties. Whenever any of the parties intends to install new underground Conduit or replace existing underground Conduit in City controlled rights of way, each party shall endeavor, whenever feasible, to provide the other parties with forty-five (45) days advance written notice in order to permit the additional contemporaneous installation of Conduit. If any party desires additional Conduit installed, it will so notify the other parties who shall be responsible for the additional incremental expense for installing such additional Conduit.

Article VIII - Special Indemnification Arising from Facilities

1. UPN shall install, construct, maintain and operate its private network in a safe manner providing reasonable protection against injury or damage to any and all persons or property. UPN specifically agrees to indemnify, defend and hold the other parties harmless from all claims, costs, demands, suits, costs of defense and judgments which arise from, in whole or in part, UPN's acts or omissions pursuant to this Agreement, and from all damages or penalties arising out of the installation, construction, operation, or maintenance of UPN's private network and Facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Agreement, except to the extent such damages or penalties result from the intentional or willful and wanton misconduct of another party to this Agreement or agent thereof. The other parties shall not be liable for, and UPN shall indemnify, defend and hold such parties harmless from all costs, damages and claims which arise from or relate to delay by UPN in performing its obligations hereunder, for any cause whatsoever, except for intentional or willful and wanton misconduct of another party to this Agreement. UPN also hereby agrees to pay all reasonable expenses of the other parties incurred by any party in defending itself with regard to any such damages, claims or penalties, including all out-of-pocket expenses, reasonable attorney's fees, and the reasonable value of any services rendered by the party's Attorney, his assistants, or any employees of that party.

2. The parties to this agreement will provide notice to UPN of the pendency of any claim or action against the such parties arising out of the operations of UPN, the exercise by UPN of its rights under this Agreement or the performance thereof by UPN. UPN shall thereafter be required to appear and defend any such claim or action. Nothing herein stated shall limit UPN's obligation of full indemnification of the other parties hereunder.

Article IX – Indemnification and Limitation of Liability

1. Indemnification. In all matters not within the context of Article VIII, to the extent authorized by law, the parties shall indemnify, defend and hold harmless the other parties, their officers, employees, elected officials, boards, commissions and any other legal entity affiliated therewith from and against all claims brought by third parties which any such Indemnified Party (defined below) is required to pay or to assume which have resulted from a breach of any duty or obligation imposed by law, including statutes, ordinances, regulations, orders, decrees, judgments and the law of torts (including without limitation gross negligence, strict liability, or willful misconduct), or this Agreement by the Indemnifying Party (defined below).

2. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary and to the extent allowed by law, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any

Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability.

3. Cooperation. The Parties shall cooperate with each other in the defense of any third-party action related to this Agreement and shall furnish each other all such further information that they have the right and power to furnish as may reasonably be necessary to defend such third-party action.

4. Immunities. Nothing in this Agreement is intended, nor shall it be construed, to create or extend any rights, claims or benefits to, or assume any liability for or on behalf of, any third party, or to waive any immunities or limitations otherwise conferred upon any public entity under or by virtue of federal or state law.

5. Notice and Defense of Third-Party Actions. Each Person entitled to indemnification under this Article (an "Indemnified Party") shall give prompt written notice to each party that is obligated to provide such indemnification (an "Indemnifying Party") of the commencement or assertion of any claim by a third party (collectively, a "third-party action") in respect of which an Indemnified Party will seek indemnification hereunder, which notice shall state, to the extent known to the Indemnified Party, the basis on which the claim for indemnification is made, the facts giving rise to or the alleged basis of the third-party action, and the amount (which may be estimated) of liability asserted by reason of the claim. Such notice shall also include a copy of the document (if any) by or in which the third-party action is commenced or asserted. Any failure so to notify the Indemnifying Party shall not relieve it from any liability that it may have to the Indemnified Party under this Agreement unless the failure to give such notice materially and adversely prejudices the Indemnifying Party and then only to the extent of such prejudice. The Indemnifying Party shall have the right to assume control of the defense of or settle or otherwise dispose of such third party action on such terms as the Indemnifying Party deems appropriate; *provided, however*, that:

(a) The Indemnified Party shall be entitled, at its own expense, and without unreasonable interference with the actions of the Indemnifying Party, to participate in the defense of third-party actions;

(b) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement, compromise, admission or any acknowledgment of the validity of a third-party action or any liability in respect thereof, which consent shall not be unreasonably withheld;

(c) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such third-party action; and

(d) The Indemnifying Party shall not be entitled to control (but shall be entitled

to participate at its own expense in the defense of) and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or other acknowledgment of any third-party action (i) as to which the Indemnifying Party fails to assume the defense within a reasonable length of time or (ii) to the extent the third-party action seeks an order, injunction or other equitable relief against the Indemnified Party which, if successful, would have a material adverse effect on the business, financial condition, operations or properties of the Indemnified Party; provided, however, that the Indemnified Party shall make no settlement, compromise, admission or other acknowledgment which would give rise to liability on the part of the Indemnifying Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

6. Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

(b) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

(c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and

(d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court, or body.

Article X - Insurance

Prior to commencement of any installation of Facilities under this Agreement, UPN shall procure and thereafter continuously maintain, for as long as this Agreement remains in effect, at UPN's expense, Commercial General Liability ("CGL") insurance in the amounts indicated in the City's Insurance Requirements for All City Contracts document, Exhibit B, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this Agreement shall be defined as an insured contract. The policy shall identify the other parties as additional insureds, shall waive subrogation of claims against such additional insureds, and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse and underground property damage hazards. A certificate of insurance shall be filed with the City Attorney's office prior to commencement of installation of Facilities, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to City and County prior to cancellation or material change of any insurance referred to therein. A certificate of insurance evidencing compliance with the requirements set forth herein shall also be delivered to the County and DEC.

In the event the certificate states that it confers no rights upon the certificate holder, the City, County or DEC may require UPN to furnish a complete copy of the policy including all declarations and endorsements.

Article XI - Term

The term of this Agreement shall be for a period of twenty (20) years from and after the date of the Agreement, unless sooner terminated as provided in this Agreement.

Article XII - Grant of Conduit and Fibers

1. The parties shall jointly use and equally share in the costs of the Conduit installed pursuant to this Agreement. To the extent a portion of Conduit is specifically installed for the purposes of one or two of the parties, such costs shall be separately allocated to the responsible party. The costs which are shared equally and those separately allocated shall be identified on the drawing attached hereto which is marked as Exhibit "A" and incorporated herein by reference. The parties shall individually own the specific number of Fibers within such Conduit at each location that are allocated to such party pursuant to Exhibit A.

2. Legal title to the Facilities including Fiber and Cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, Fiber distribution centers and other hardware needed or used to fasten or support the Cable shall be held by the City. Neither anything contained in this Agreement, nor any use, however extended, of these Facilities, nor any placement of another party's Facilities on or in another party's network shall create or vest (or be construed as creating or vesting) in another party any right, title or interest in or to any real or personal property owned by other parties. Nothing herein shall be deemed to relinquish City's right, title, interest or control of the public Right of Ways.

3. The public parties shall have the right to pledge their rights and privileges contained in this Agreement, to secure financial obligations to third parties without the need to obtain consent from UPN. The parties shall keep the Facilities and other property subject to this Agreement free from any liens, rights or claims of any third party attributable to such party that adversely affects or impairs the ownership and use of these Facilities or other property.

4. (a) The parties may not sell or lease "dark Fiber", capacity or bandwidth on Fibers that are the subject of this Agreement to third parties or resell or otherwise assign its rights and privileges contained in this Agreement to third parties without the written consent of all the parties to this Agreement.

(b) The parties shall be permitted to connect the Fibers to, and use the Fiber for use and benefit of, each entity's elected bodies, departments, joint departments with the County, legal enterprises and affiliated entities which are established or created in whole or in part by City Charter, Ordinance or Resolution or interlocal agreement and which perform, in whole or in part, authorized functions of City or County government or the DEC in either its propriety or

governmental capacities.

(c) The public parties agree not to use the Fibers or allow the Fibers to be used in any manner that is commercially detrimental to UPN.

Article XIII - Maintenance of Fibers

1. Maintenance.

(a) UPN shall maintain and repair the Fibers and potentially the Conduits so as to assure continuing conformity of the Fibers with their respective operating specifications.

(b) UPN shall respond in a timely manner to any interruption of service or failure of the Fibers to operate in accordance with this Agreement.

(c) UPN shall splice the Fibers so as to assure continuing conformity with City specifications, as appropriate, including, without limitation, conducting surveillance of such Facilities, location of faults, splicing and splice testing associated with any restoration, and procurement of replacement Cable used in restoration. Splice configuration shall be provided to UPN by the parties and paid for as stated in Section 1.(e) below.

(d) UPN shall be responsible for routine maintenance of all Cable and Fiber, UPN's, the public parties to this agreement, in its Private Network and costs thereof not specifically due to requirements of the other parties.

(e) The parties shall pay UPN all reasonable costs including a markup of 21% (which markup includes profit and overhead) incurred by UPN for any special work requested by such party in writing and furnished by UPN to perform any special maintenance action on the Fibers. Costs shall include loaded labor, contractor, material and any other expenses directly associated with maintenance, conditioning and activation of Fibers.

(f) UPN shall be responsible for all One Call locates of the Fiber within Conduits installed pursuant to this Agreement.

2. Relocation. If, during the Term of this Agreement, (a) UPN is required by a governmental authority with jurisdiction to relocate any portion of the private network, including any of the Facilities used or required in providing the Fibers, including any condemnation or taking under the power of eminent domain of all or any portion of the System, or (b) with the other parties' concurrence upon UPN's request, UPN may relocate such portion of the private network. UPN shall give City sixty (60) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to be used for such relocation; provided that any such relocation shall be constructed and tested in accordance with the specifications and requirements set forth herein. Nothing in this section, however, shall be construed to limit or

restrict the public parties in requiring specific relocation arrangements, physical locations or materials in connection with such party's control over public rights of way, including excavation permits.

Article XIV - Delivery, Use and Connection of Fibers

1. Delivery of Fibers. UPN agrees to deliver to the other parties the Fibers within thirty (30) days of on or before the dates specified in Exhibit A,

2. Access. UPN will provide the parties with access to the Fibers at such splice points on the System Route as reasonably requested subject only to the requirements in the Underlying Rights and provided that such access points do not materially interfere with any UPN Facilities. UPN shall have unrestricted access to the Conduit identified in Exhibit "A".

3. Use of Facilities. The parties may use the Fibers for their internal uses to provide any lawful telecommunications and data transmission, subject to the limitations of Article XI of this Agreement. The parties shall not use the Fibers in any manner that is not in compliance with (i) any and all applicable government codes, ordinances, laws, rules, regulations and/or restrictions, and ((ii) the Underlying Rights, as such may be amended from time to time. Neither party shall use, any product or service that fails to comply with any applicable safety rules or that would cause any UPN to violate any state or federal environmental laws. The parties shall have no limitations on the types of electronics or technologies employed to utilize the Fibers subject to its use of commercially reasonable safety procedures and so long as such electronics or technologies do not interfere with the quiet use and enjoyment of or create any risk of damage to all or any portion of the Private Network used by any other user of the Private Network.

4. Connection. If party desires to connect other fiber optic cables to the Fibers or create connections with buildings or other structures among the route, UPN will cooperate with such party to acquire access. The parties shall have the right, after acquiring permission to do so, to place their own connecting Facilities within public rights of way between the Fibers and such adjoining properties. However, upon request, UPN will place connecting Facilities within public rights of way between the Fibers and such adjoining properties, subject to the ability to do so pursuant to the Underlying Rights. Such placement of connecting Facilities by UPN at the request of a party shall be at such party's sole cost and expense (including Costs incurred by UPN in providing oversight of any contractors excavating on the Rights of Way or near the Cable to make such connection) as contemplated in this Agreement. Each connection to provided Facilities requiring a Cable to be entered will be performed by UPN at such party's sole expense as contemplated in Section 1(e) of Article XII. In order to schedule a connection of this type, a party shall contact UPN to undertake the work at least fourteen (14) days in advance of the date the connection is requested to be completed. Such work will be restricted to planned system work period weekends unless otherwise agreed to in writing for specific projects.

Article XV - Remedies, Termination, Removal

1. In the event of any breach of the terms of this Agreement by either party, the non-breaching party shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one (1) or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one or more of them constitute any bar or limitation to the exercise of any other: (a) specific performance or injunctive relief, (b) monetary damages, and (c) termination. In the event any party is required to commence an action to enforce its rights under this Agreement or to obtain remedies provided above and substantially prevails therein, such party shall be entitled to recover its costs against the breaching party, but excluding attorneys fees and expert witness fees.

2. Before terminating the Agreement for cause on account of any default, the non-defaulting party shall provide the party in default with written notice of the default and afford such party a reasonable period in which to cure the default.

Article XVI - Delays and Limitation of Liability

1. Delays. Under no circumstances shall either any party ever be liable for any delay in restoring any service or Fibers or any operational aspect of the fiber optic systems containing such Fibers which has been subjected to an outage, interference or interruption, whatever the cause of such outage, interference or interruption, unless due to willful nonfeasance or willful misfeasance of such Party.

2. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary and to the extent allowed by law, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. No claims for damages with respect to this Agreement may be made more than five (5) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of this Agreement hereof may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

Article XVII - Notices

Except as otherwise provided herein, notice under this Agreement shall be deemed sufficient if provided in writing and mailed or delivered as follows:

If to the IS or ES: City of Lincoln
City Clerk
555 S. 10th
Lincoln, NE 68508

With a copy to: Public Works and the City Attorney's office

If to DEC: Lincoln Electric System
1040 O St.
P.O. Box 80869
Lincoln, NE 68508

If to the County: Lancaster County Clerk
555 S. 10th
Lincoln, NE 68508

With A copy to: County Attorney's office
575 S. 10th
Lincoln, NE 68508

If to UPN: UPN Private Networks, L LC
Attention: Chief Executive Officer
PO Box 25526
Kansas City, MO 64119

With a copy to: Lincoln Director of Enterprise Sales

Article XVIII - Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this Agreement shall confer rights or benefits upon any person not a party hereto.

Article XIX - Signatures

The persons signing this Agreement on behalf of UPN represent and warrant that such persons and UPN have the requisite power and authority to enter into, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of UPN enforceable against UPN in accordance with its terms.

Article XX - Miscellaneous Provisions

1. Amendments. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties.

2. Limitation of Benefits. It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

3. Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; provided, however, that if any such ineffectiveness or unenforceability of any provision of this Agreement, in the good faith judgment of any Party, renders the benefits to such Party of this Agreement as a whole uneconomical in light of the obligations of such Party under this Agreement as a whole, then the parties shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

4. Independent Contractors. In all matters pertaining to this Agreement, the relationship of UPN and the other public parties shall be that of independent contractors, and none of the parties shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between the parties; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and workers compensation responsibilities.

5. Labor Relations. Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

6. Exercise of Rights. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any, other right, power or privilege.

7. Additional Actions and Documents. Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be

reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

8. Survival. The obligations of the Parties under Article IV, V, VII, VIII, IX, X and XVI shall survive any termination of this Agreement.

9. Headings. Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

10. Incorporation of Exhibits. The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein. Any Attachments to the Exhibits shall also be deemed to be an integral part of the Agreement.

11. Governing Law. This Agreement and each of its provisions shall, be governed by and construed and interpreted according to the substantive laws of the State of Nebraska without regard to its conflicts of law or choice of law provisions.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14. Force Majeure. No party will be liable for the failure to fulfill its obligations under this Agreement if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of Facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither party will be liable for delays caused by the inaction of utilities, local exchange carriers, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the Facilities.

15. Assignment. No party shall assign any interest in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the Agreement or Facilities installed or maintained pursuant to this Agreement (whether by assignment or novation), without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY: Information Services and
Engineering Services
CITY OF LINCOLN,
A Municipal Corporation

ATTEST:

City Clerk

By: _____
Mayor Chris Beutler

[S E A L]

LANCASTER COUNTY BOARD OF COMMISSIONERS

ATTEST:

By: Deb Schorr
Deb Schorr, Chair

DISTRICT ENERGY CORPORATION

ATTEST:

By: Doug Buntam
Name: Doug Buntam
Its: Management Contractor

Title: _____

UPN:
UNITE UPN PRIVATE NETWORKS, LLC

ATTEST:

By: Kevin Anderson
Kevin Anderson
Title: CEO

Title: _____

EXHIBIT A

Project: Jail Fiber Agmt project

_____, 2011

Description of Service:

- A. The City owns a limited number of conduits generally located as follows:
 - 1) Two inch conduit from Sun Valley & West O to the SE corner of Hwy 77 and West O
 - 2) Four inch conduit from Sun Valley & West O to the Hall of Justice at 9th & K, and from Hall of Justice to Information Services at 10th & M
- B. Unite shall install the following:
 - 1) a 1.25 inch conduit, and pull boxes as needed, from SW40th & West O to the east side of Hwy 77 & West O
 - 2) Upgrade existing pull boxes in A.1. above to fiber pull boxes
 - 3) Remove the existing 6 pair of Commercial cable in A.1. above
 - 4) Install new conduit from 2 inch conduit in A.1. above to 4 inch conduit in A.2.
 - 5) Install 120 fibers in the conduit between the County Jail, located at SW 40th and O St, to the Hall of Justice. Of those fibers, 24 fibers are for the County's use and 24 fibers are for DEC use. The other fibers shall run from the Hall of Justice to the City IS facility located at 10th & M.
- C. The fibers will be shared, each party to receive 24 fibers.
- D. The installation and maintenance for the conduit and fiber will be provided by Unite. There will be drops provided for the parties at locations as indicated in Attachment _____ to this Exhibit A.

Deadline for Service:

The service described above shall be completed on or before October 21, 2011.

Project Engineering Drawings:

See attached drawings Attachment A Project _____ Pages 1 thru ____ for detailed project fiber construction for Jail Fiber Project.

Total Cost for Project: \$204,581.13

Each the five party's obligation under this agreement is \$40,916.23