CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: December 18, 2023

ITEM:

Resolution – Approval of Conduit License Agreement with Unite Private Networks

FINANCIAL IMPACT:

Approximately $23,880.00 in conduit lease revenue.

BACKGROUND:

The City has negotiated a License Agreement with Unite Private Networks that will allow Unite Private Networks to access to the Digital Enterprise Conduit Network. Approximately 2,388 lineal foot of a single duct in a seven duct Local Access Conduit beginning near the intersection of Lincoln Street and South 1st Street (Iowa 28), running along the west right-of-way of South 1st Street, under the Raccoon River. The City will receive a lump-sum payment of $10.00 per lineal foot. The agreement will run for twenty years, with the option for Unite Private Networks to renew the contract for two successive five-year terms.

OUTSTANDING ISSUES: None

RECOMMENDATION:

- Approve the Conduit License Agreement between the City of West Des Moines and Unite Private Networks

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Greta Truman, Assistant City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	December 12, 2023

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed	December 11, 2023		
Recommendation	**Yes**	No	Split

RESOLUTION NO. _____

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A CONDUIT LICENSE AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA AND UNITE PRIVATE NETWORKS

WHEREAS, the City of West Des Moines seeks to promote increased fiber access for the provision of broadband to businesses and residents that will provide competition and preserve the public right-of-way for future public needs; and

WHEREAS, the City wishes to expand its underground conduit to preserve its congested right-of-way, attract additional private sector companies as licensees, and encourage the deployment of a private, fiber-to-the premises network, all in an effort to bring world-class connectivity to every resident and business in the City; and

WHEREAS, the City has negotiated an agreement with Unite Private Networks, a Missouri based company, in which Unite Private Networks would license City-owned conduit and pay the City a fee to allow Unite Private Networks to install fiber in the conduit for a period no less than twenty years; and

WHEREAS, the agreement negotiated between the City and Unite Private Networks fulfills the City's goals by providing that Unite Private Networks will license a portion of City-owned conduit, pay a licensing fee, and deploy its fiber-to-the-premises network to residents and businesses in the City; and

WHEREAS, pursuant to the terms of the Agreement, the City and Unite Private Networks would establish their respective rights and obligations in connection with the conduit network and provide that Unite Private Networks will be a licensee of the conduit network; and

WHEREAS, pursuant to the published notice, the City Council has held a public hearing on the proposal to approve and authorize execution of the Conduit License Agreement between the City of West Des Moines and Unite Private Networks; and

WHEREAS, approval of the Agreement is in the best interest of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

1. The public hearing regarding approval and execution of the Conduit License Agreement between the City of West Des Moines and Unite Private Networks is closed.

2. The Conduit License Agreement between the City of West Des Moines, Iowa and Unite Private Networks is approved.

3. The Mayor is authorized to the sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

PASSED AND APPROVED this 18th day of December, 2023.

_____

Russ Trimble, Mayor

ATTEST:

_____

Ryan T. Jacobson, City Clerk

CONDUIT LICENSE AGREEMENT
BETWEEN
THE CITY OF WEST DES MOINES IOWA
AND
UNITE PRIVATE NETWORKS

This Conduit License Agreement ("Agreement") is entered into this 18th day of December, 2023 by and between Unite Private Networks, and the City of West Des Moines, Iowa ("the City"), a municipality organized and existing under the laws of the State of Iowa. The City and Unite Private Networks are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

Background

WHEREAS, this Agreement is made in light of the following premises and circumstances, all of which are a part of this Agreement:

A. Unite Private Networks, authorized to provide communications or telecommunications services in the State of Iowa, will be the owner of certain fiber optic cables comprising a component of its communications or telecommunications facilities network that Unite Private Networks plans to install within City-owned conduit within the geographic boundaries of the City;

B. The City is a political subdivision of the State of Iowa and is or will be the owner of certain conduit within its boundaries;

C. The intent of the Parties is to increase fiber access to businesses and residents of West Des Moines in a manner that promotes competition and preserves public ROW for future public needs; and

D. The City and Unite Private Networks desire to enter into an agreement to govern the terms and conditions under which the City will reserve certain conduits or space within its conduit to accommodate the installation and maintenance of Unite Private Networks fiber optic cable in connection with Unite Private Networks provision of communication services in the City.

Agreement Terms and Conditions

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the City and Unite Private Networks for valuable consideration, the sufficiency of which is hereby acknowledged, hereby agree as follows:

1. Definitions

1.1 For the purpose of this Agreement, the following terms when used herein shall have the following meanings:

(i) "Access Point" means a physical point in the Conduit: (a) where Unite Private Networks can readily and safely access the inside of the Licensed Conduit and the Fiber for installation, repair, maintenance, replacement, and removal, without the need for excavating a road, sidewalk, or other surface, including without limitation at the vaults, pedestals, cabinets, and other Conduit termination or junction locations; and (b) is connected through Local Access Conduit to the Meet-Me Point.

(ii) "City" means the City of West Des Moines, Iowa.

(iii) "City Conduit" or "Conduit Network" means the physical multiple conduit manifold system owned by the City through which Fiber Optic Cable is run from Access Point to Access Point throughout the geographic area of the City and any corresponding City-owned Access Points connected thereto.

(iv) "Conduit" refers to the physical pipe or tube through which Fiber Optic Cable is run.

(v) "Costs" means all actual, documented, and reasonable costs incurred and computed in accordance with generally accepted accounting principles and include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs (the overhead allocation will not exceed twenty percent (20%) of the labor costs computed without such overhead); and (b) other direct costs and out-of-pocket expenses on a pass-through basis (including without limitation equipment, materials, supplies, contract services, sales, use or similar taxes, and professionals' fees).

(vi) "Delivery Date" means the date on which the City delivers to Unite Private Networks the Licensed Conduit together with the Acceptance Testing results.

(vii) "Equipment" means all Licensee communications and networking facilities not defined as Fiber Optic Cable including but not limited to splitters, splices, closures, and enclosures used in connection with providing its communications service.

(viii) "Evaluation Period" means the period of twenty (20) calendar days after Unite Private Networks receives the Acceptance Testing results.

(ix) "Fiber Optic Cable" or "Fiber" means a glass strand or strands which is/are protected by a color-coded buffer tube and which is/are used to

transmit a communication signal along the glass strand in the form of pulses of light.

(x) "Interfering Use" means any use of, or action with respect to, the Conduit that (a) causes any physical or electromagnetic interference in violation of any applicable Federal Communications Commission rule or the National Electrical Safety Code; (b) physically damages a Licensee's Fiber or Equipment installed in the Licensed Conduit; or (c) impedes a Licensee's ability to access, install, repair, replace, or remove the Licensee's Fiber or Equipment, or any portion thereof, due to the placement of Fiber or Equipment in intermediate vaults or other shared spaces in the City Conduit, in excess of the space allocated by the City.

(xi) "Intermediate Access Point" or "IAP" means a vault shared by all Licensees installed along Local Access Conduit for the purpose of accessing Licensed Conduit for the installation and ongoing maintenance of Fiber Optic Cable. The use of the IAP to support Licensee Equipment will be limited to cable pulls, slack storage and reel-end splicing. Only Local Access Conduit may terminate at an IAP. Connections to outside networks may only occur at an IAP.

(xii) "Licensed Conduit" means all or a portion of City Conduit specifically identified in Exhibit A, Exhibit A-1 or in such other exhibits subsequently added administratively by mutual written agreement of the Parties, in which space shall be reserved and/or designated for Unite Private Networks to "pull" or "run" and then maintain Fiber Optic Cable in accordance with and subject to the terms of this Agreement.

(xiii) "Licensee" means Unite Private Networks and any Third-Party User.

(xiv) "Licensee Assigned Vault" means a vault installed by Unite Private Networks at locations identified during the design review and approval process for their exclusive use to store Equipment and Fiber. An LAV shall connect to an IAP to access the Local Access Conduit.

(xv) "Local Access Conduit" means that portion of the Licensed Conduit that is installed in the public rights-of-way and houses trunk cables, feeder cables, and distribution cables connecting between MMP, IAP and LAV throughout the Licensed Conduit.

(xvi) "Meet-Me Point" means a point at which the Conduit connects to a facility or network designated by Unite Private Networks at which Unite Private Networks may interconnect the Fiber to optronics and other facilities, and to other networks, for purposes of aggregating and backhauling the data carried on the Fiber and for connecting the Fiber to the public Internet.

(xvii) "Right of Way" or "ROW" means the area of public street, highway, avenue, alley, bridge or sidewalk reserved by deed or easement for the purposes of maintenance or expansion of existing services.

(xviii) "Service Access Point" or "SAP" means an Access Point located at buildings served by DCS.

(xix) "Third-Party User" means any third party that installs or maintains any Fiber or Equipment in the Licensed Conduit pursuant to a license, lease, or other agreement with the City.

2. License

2.1 License Grant. Subject to the terms, conditions and limitations set forth herein, and in exchange for Unite Private Networks payment of the License Fee set forth in Section 3, the City hereby grants to Unite Private Networks a license and right for the use of Licensed Conduit for the installation and maintenance of Fiber Optic Cable owned or employed by Unite Private Networks.

2.2 Term. The initial term of this Agreement shall be twenty (20) years from the Date of this Agreement (the "Initial Term") unless terminated earlier in accordance with this Agreement. Upon the expiration of the Initial Term, the Agreement may be extended for two additional five (5) year periods upon written request by Unite Private Networks not less than 60 days prior to the expiration of the current Term of this Agreement and approval by City. Any extension shall require an additional one-time payment as agreed to by Unite Private Networks and the City.

2.3 Scope of Grant.

(i) The City hereby grants to Unite Private Networks a license for, and the right to access and use, the Licensed Conduit for purposes of installing, maintaining, operating, repairing, and replacing Fiber Optic Cable and providing any lawful service that does not constitute an Interfering Use. The Parties acknowledge and agree that this Agreement constitutes a license and right of use of the City's personal property, and that the rights granted by the City to Unite Private Networks under this agreement is not a conveyance of any interest in any real property. Except as expressly provided in this Agreement, the City shall have no obligation whatsoever to install any additional conduit or to allocate any additional space in existing City Conduit to meet the needs of Unite Private Networks.

(ii) Unite Private Networks is responsible for installing, maintaining, and replacing the Fiber Optic Cable in the Licensed Conduit and Unite Private Networks shall undertake to obtain and provide all approvals, authorizations, coordination and supervision that is necessary in

connection with its use of the subject Licensed Conduit and installation of Fiber Optic Cable.

(iii) The City and Unite Private Networks agree and acknowledge that Unite Private Networks' use of the Licensed Conduit and installation of Unite Private Networks' Fiber Optic Cable within such Licensed Conduit does not and will not create or convey to Unite Private Networks any ownership or property rights of any nature in any City-owned Conduit, Fiber Optic Cable or Access Points. Unite Private Networks may not encumber, offer as collateral, or allow any third-party claims of any type on or against the Licensed Conduit. Subject to Unite Private Network's rights under this Agreement, the City may use the City Conduit for any lawful purpose, provided that such use is not an Interfering Use and does not require Unite Private Networks to share the dedicated ducts assigned to Unite Private Networks within the Licensed Conduit except as set forth this in this Agreement.

2.4 Access to Licensed Conduit

(i) Notice of Delivery. The City will provide written notice to Unite Private Networks no later than twenty (20) days prior to the date, on or after the completion of installation of the Licensed Conduit, on which the City anticipates delivering the Licensed Conduit for Acceptance Testing (the "Estimated Delivery Date").

(ii) Acceptance Testing. The City will give Unite Private Networks at least two (2) days' prior notice of the date, time, and location of Acceptance Testing and Unite Private Networks will have the right to have representatives present to observe the Acceptance Testing. On the Delivery Date for the Licensed Conduit, the City will provide the Acceptance Testing results. Nothing in this Section 2.4 will limit the City's discretion to provide Third-Party Users with the same notice prior to such Third-Party User's acceptance of its licensed conduit in the Conduit Network.

(iii) Unite Private Networks' Evaluation. Unite Private Networks shall have twenty (20) business days from the Delivery Date to either accept or reject the Licensed Conduit. If the Licensed Conduit is rejected in writing by Unite Private Networks, the City shall have twenty (20) business days to cure any noted deficiency, and a new Evaluation Period shall be triggered when the City re-delivers the Licensed Conduit to Unite Private Networks. If the re-delivered Licensed Conduit is rejected by Unite Private Networks, this Agreement shall terminate unless the Parties mutually agree to the contrary. During the Evaluation Period, Unite Private Networks may request by notice to the City the opportunity to independently verify the sufficiency of the Licensed Conduit and the City

will provide Unite Private Networks with escorted access to any intermediate points on the Conduit Network for the purpose of such independent verification, where such access is technically feasible and where an interface point can be made available for testing without adversely affecting the condition or operation of the Conduit Network. Nothing in this Agreement shall be interpreted as preventing the City from making similar access available to Third Party Users, provided such access does not infringe upon Unite Private Networks' rights hereunder.

(iv) Acceptance Date. If Unite Private Networks does not reject the Licensed Conduit during the Evaluation Period, the Licensed Conduit shall be deemed accepted ("Acceptance Date") upon the earlier of the date written acceptance is provided by Unite Private Networks to the City or the end of the Evaluation Period, provided that the Evaluation Period will be extended as noted above for the duration of any corrective action taken by the City.

(v) Access and Use. During the Term, subject to and in accordance with the terms and conditions of this Agreement, Unite Private Networks will have the right to use the Licensed Conduit for the purposes of installing, testing, maintaining, replacing, or removing its Fiber Optic Cable, and to provide any lawful service provided that such use is not an Interfering Use for any other Third Party User within the City Conduit. Unite Private Networks also has the right to interconnect the Licensed Conduit at an IAP to conduit that Unite Private Networks may own, lease, or otherwise acquire for its own use, provided: (a) Unite Private Networks receives written permission from the City in advance (such permission shall not be unreasonably withheld provided such connection is consistent with the City's stated purposes for constructing the City Conduit); (b) such connection does not damage or impair the City Conduit or other property of the City; and (c) such connection does not constitute an Interfering Use.

(vi) The City will require Third-Party Users, if any, to: (a) provide Unite Private Networks no less than 72 hours' prior written notice before such Third-Party User accesses any portion of the Licensed Conduit that is Local Access Conduit for any purpose, including without limitation to repair, maintain, or replace such Third-Party User's facilities installed in the Licensed Conduit, and (b) permit Unite Private Networks to observe the work performed by or at the direction of the Third-Party User to ensure that Unite Private Networks' Fiber Optic Cable is not damaged in the process. Likewise, Unite Private Networks hereby agrees to: (x) provide Third Party Users no less than 72 hours' prior written notice before accessing any portion of the Licensed Conduit that is Local Access Conduit for any purpose, including without limitation to repair, maintain, or replace Unite Private Networks' Fiber installed in the Licensed Conduit; and (y) permit Third Party Users to observe the work performed

by or at the direction of Unite Private Networks to ensure the Third Party User's Fiber and Equipment is not damaged in the process.

(vii) Unite Private Networks is solely responsible for obtaining all public, private or government approvals, authorizations, permits, certifications, easements, rights of way and attachment rights beyond those required for installation and maintenance within the Licensed Conduit, if any, that are necessary in order for Unite Private Networks to install, light and transmit or receive signals using the Fiber Optic Cable installed in said Licensed Conduit, and shall provide documentary evidence thereof as and when reasonably requested by the City. This shall include, but not is not limited to, ensuring all necessary traffic control.

2.5 Limitations and Requirements for Use of the City Conduit

(i) The City and Unite Private Networks agree and acknowledge that Unite Private Networks may use the Licensed Conduit to place and utilize Fiber Optic Cable for any lawful purpose for which the Fiber Optic Cable is technically suited, provided that Unite Private Networks shall use the Fiber Optic Cable solely for its business purposes and such use is not an Interfering Use.

(ii) Unite Private Networks shall not, and the City shall not permit any Third-Party User of the City Conduit to, install, store, place, or operate any cables, wires, or other powered or unpowered facilities or equipment in, or to otherwise use or to take any other action with respect to, the Licensed Conduit if such installation, storage, placement, operation, or other use or action constitutes an Interfering Use. In the event that Unite Private Networks determines that a Third-Party User is engaging in an Interfering Use, Unite Private Networks may notify the City and the City will promptly cooperate with Unite Private Networks to determine the source of and remediate such Interfering Use. In the event that a Third-Party User notifies the City that it has determined that Unite Private Networks is engaging in an Interfering Use, Unite Private Networks will cooperate in good faith with the City and any Third-Party User to promptly determine the source of and remediate such Interfering Use.

(iii) The City shall have the right at any time to remove or relocate any portion of the City Conduit that presents an imminent danger to life or property, at the City's sole discretion without incurring any liability for such removal or relocation, other than as a result of the City's negligence or willful conduct, provided that the City will restore such affected Licensed Conduit as soon as reasonably possible. The City will not be responsible for reinstalling and repairing Unite Private Networks' Fiber Optic Cable nor paying Unite Private Networks' Costs of reinstalling and repairing its Fiber for relocations under an emergency relocation or removal, and Unite

Private Networks agrees to promptly cooperate in the removal and relocation of its Fiber and facilities in the impacted Conduit under these circumstances. Other than in the case of an emergency relocation or removal described above, the City will give Unite Private Networks one hundred and eighty (180) days' prior written notice (unless Unite Private Networks consents to a shorter notice period in writing) before beginning any relocation or removal of any Licensed Conduit, and will provide for alternate pathways connected to the City Conduit suitable for housing Unite Private Networks' Fiber Optic Cable in the relocated portion of the Licensed Conduit no later than thirty (30) days prior to the schedule date of relocation. Unite Private Networks will cooperate in good faith with the City to facilitate such other relocation, including the removal or relocation of Unite Private Networks' Fiber installed in the Licensed Conduit. The City shall pay Unite Private Networks' Costs of reinstalling and repairing its Fiber resulting from any such non-emergency relocation.

(iv) Any Fiber Optic Cable or Equipment provided by Unite Private Networks in the Licensed Conduit shall be installed and maintained in accordance with the requirements and specifications of then current editions of the National Electrical Code (NEC), and the National Electrical Safety Code (NESC), each of which are incorporated by reference in this Agreement. Further, Unite Private Networks and its consultants and contractors shall at all times comply with the applicable rules and regulations of the Occupational Safety and Health Act of 1970 (OSHA), with all applicable state and federal statutes and laws, and with all applicable regulations, rules and orders issued by any state or federal agency having jurisdiction thereof, including without limitation the Federal Communications Commission, the Iowa Utilities Board, or other applicable regulatory agency. As between the Parties, Unite Private Networks shall be responsible for compliance with all data privacy and other legal requirements associated with the Unite Private Networks Fiber Optic Cable and the transmission of data on or through its network, Fiber or Equipment.

(v) The City reserves the right to make periodic inspections at any time of any part of Unite Private Networks' Fiber Optic Cable and Equipment utilized by Unite Private Networks in conjunction with the subject Fiber Optic Cable in the Licensed Conduit for purposes of assuring compliance with the terms and conditions hereof and with applicable laws, rules and regulations as reasonably necessary to prevent or detect interference with or damage to the City Conduit or breaches of Unite Private Networks' obligations hereunder. Except in the case of an emergency, the City shall give Unite Private Networks forty-eight (48) hours' notice before carrying out such inspections and Unite Private Networks shall be permitted, but not required, to have a representative present for such inspections. Such inspections shall be conducted at the City's expense unless the City

determines that Unite Private Networks is not in compliance with the terms of this Agreement. In such instance, Unite Private Networks shall be responsible for paying the City for all reasonable Costs incurred by the City in making the inspection. Unite Private Networks agrees that such periodic inspections by the City, or the failure to do so, shall not relieve Unite Private Networks of any responsibility, obligation or liability whether assumed under this Agreement or otherwise existing.

(vi) In recognition of the value and benefit of a streamlined permitting process for the efficient and rapid deployment of facilities by private users in the City Conduit, the Parties will cooperate in good faith on executing a master permitting agreement or similar protocol that will be available for users of the City Conduit in connection with installing and maintaining their respective facilities therein. Where excavation (as defined in the West Des Moines City Code) of the street or sidewalk surface is not required, the master permitting agreement will enable users of the City Conduit to obtain permission from the City upon submission of a prior electronic, consolidated notice containing the scheduled time and location of work, and identifying information previously provided by the City to such user about the portions of the City Conduit to be accessed. If the City determines that an ordinance is required to adopt such streamlined permitting process, it will take steps consistent with applicable law and procedures to adopt such an ordinance prior to executing a master permitting agreement or similar protocol.

3. License Fees.

3.1 As a condition precedent to accessing the Licensed Conduit, Unite Private Networks shall pay to the City a lump sum payment equivalent to Ten Dollars ($10.00) per linear foot of Local Access Conduit included within the Licensed Conduit ("License Payment").

3.2 If such payment is not received by the City by the Acceptance Date, the City may terminate this Agreement consistent with Section 9.1(i).

3.3 During the Term of this Agreement, unless and until expressly and affirmatively compelled by federal or state statute or by a final, non-appealable order of a court with competent jurisdiction, the City will not charge Unite Private Networks any additional charge, license, encroachment or franchise fee, or any in-kind service or any other consideration, other than the License Payment or other payments expressly described in this Agreement, for the use of the Licensed Conduit as and to the extent set forth in this Agreement. Notwithstanding the foregoing, in the event that Unite Private Networks offers "cable service" or "video service," as those terms are defined in Chapter 477A of the Iowa Code, as amended, over the Fiber Optic Cable in the Licensed Conduit, Unite Private Networks will comply with the requirements with Chapter 477A of the Iowa Code including without

limitation the payment of any applicable franchise fees to the City as well as any franchise fees implemented by the City related to the provision of "cable television" services under Iowa Code section 364.2.

4. Maintenance

4.1 During the Term, the City will be responsible for maintaining the structural integrity of the Licensed Conduit in good condition, utilizing sound engineering practices. If the City becomes aware of a blockage, cut, collapse, dislocation, destruction or other damage to the Licensed Conduit ("Damage"), the City will notify Unite Private Networks as soon as practicable and will restore the Licensed Conduit in as timely and expedited a manner as reasonably possible. Notwithstanding anything to the contrary in this Agreement, if Unite Private Networks or one of its contractors or agents causes Damage to the City Conduit, Unite Private Networks shall notify and reimburse the City for the City's Costs of repairing such Damage and restoring the City Conduit to its condition prior to such Damage.

4.2 With respect to the City Conduit and the facilities of any and all Licensees installed therein, City will on behalf of itself and any and all licensees comply with Iowa Code Chapter 480 ("Underground Facilities Information") or other applicable law, including but not limited to registering the City Conduit with the Iowa One Call System and timely responding to excavation notices submitted by excavators through the Iowa One Call System by marking the Conduit Network. In particular, in its response to the excavation notices and in marking the location of the City Conduit, City will also respond on behalf of any and all Licensees with facilities contained within the portions of the City Conduit subject to the excavation notice and locate request, to the same extent and with the same degree of care as it does for the City Conduit.

4.3 Unite Private Networks shall have sole responsibility for maintaining all of its Fiber Optic Cable and Equipment installed in the Licensed Conduit or interconnected to the Fiber Optic Cable or Equipment installed in the Licensed Conduit. Unite Private Networks shall maintain its Fiber and Equipment in good repair and in a manner that will not constitute an Interfering Use.

5. Disclaimer of Warranties, Liability and Damages

5.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT BEYOND THE MANUFACTURERS' WARRANTY AS TO THE FITNESS OF THE LICENSED CONDUIT, EITHER EXPRESS, IMPLIED OR STATUTORY, AND THE PARTIES HEREBY EXPRESSLY EXCLUDE AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

ARISING BY A COURSE OF DEALING, USAGE, OR TRADE PRACTICE OR COURSE OF PERFORMANCE.

5.2 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Mutual Indemnification

6.1 Both the City and Unite Private Networks (as "Indemnifying Party") hereby agree to indemnify, defend and hold harmless the other (as "Indemnitee") from and against any third party demand, claim, action, suit or proceeding ("Claim") and any resulting loss, liability, cost, expense or fine, including court and appeal costs and reasonable attorneys' fees and expenses ("Losses"), that are caused by or arise out of the actual or alleged acts or omissions, whether negligent or willful, of the Indemnifying Party, its personnel, agents, contractors or assigns, in connection with the performance under this Agreement or otherwise in connection with the construction (including any excavation), installation, operation, maintenance or use of the City Conduit or any equipment or facilities interconnected or associated therewith. In the event that any such liability, loss, damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

6.2 Notwithstanding the foregoing, each party's respective obligations as an Indemnifying Party under Section 6.1 above shall not include any liability or obligation to defend:

(i) to the extent that Losses arise out of or are caused by the Indemnitee's intentional misconduct;

(ii) to the extent that the defense of any Claim is prejudiced, or the resulting Losses are caused by the Indemnitee's failure or refusal to provide the Indemnifying Party with timely notice of the Claim, or to cooperate in the defense thereof, or are caused by the Indemnitee entering into a settlement or compromise of the Claim without the prior written approval of the Indemnifying Party; or

(iii) to the extent that Losses result from the Indemnitee's failure or refusal to take commercially reasonable actions as the Indemnifying Party may

request, and at the Indemnifying Party's sole cost and expense, in order to mitigate or lessen such Losses.

6.3 Notwithstanding anything herein to the contrary, Unite Private Networks shall also indemnify the City against any third-party claims or charges comprising pass-throughs of property taxes imposed upon structures located in the ROW by reason of the City's attachments of facilities to such structures or improvements made to such structures in order to accommodate such attachments.

7. Insurance

7.1 Unite Private Networks and all contractors shall at all times during the term of this agreement maintain insurance coverage as required by City and set out in Exhibit B, and as such minimum insurance coverage may from time to time be amended. Unite Private Networks shall make available to the City proof of Insurance (which is available at Unite Private Networks) evidencing coverage currently in effect prior to commencing installation of any Fiber Optic Cable within the City Conduit. Unite Private Networks shall provide the City with thirty (30) days prior written notice of cancellation or any material adverse change in conditions. All policies shall include the City as an additional insured.

8. Assignment

8.1 Neither Party may transfer or assign, voluntarily or by operation of law, its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned, or delayed); provided, however, that either Party may assign its obligations and rights under this Agreement upon notice and without the other Party's consent to: (a) an entity that directly or indirectly controls, is controlled with or by, or is under common control with the assigning Party; (b) an entity resulting from any merger, consolidation or other reorganization involving the assigning Party; or (c) the purchaser of all or substantially all of assigning Party's assets.

8.2 Unite Private Networks shall not have any right or authority to sublicense its right to use the Conduit under this Agreement to any party.

8.3 Neither this Agreement nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

9. Termination

9.1 The Parties shall have the right to terminate this Agreement and the license granted herein under the following circumstances:

(i) The City may terminate this Agreement: (a) upon thirty (30) days written notice with an opportunity to cure within ten (10) days therefrom in the event that Unite Private Networks commits a material breach of this Agreement, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, or becomes insolvent, or becomes subject to direct control by a trustee, receiver or similar authority, or uses the Licensed Fiber for any unlawful purpose, or (b) upon sixty (60) days written notice in the event that the City for any reason ceases to have rights to operate and maintain the City Conduit or any significant portion thereof. Under this provision, the City shall not be required to reimburse Unite Private Networks for any portion of the License Fee.

(ii) Unite Private Networks may terminate this Agreement upon thirty (30) days written notice with an opportunity to cure within ten (10) days therefrom in the event the City commits a material breach of this Agreement. If Unite Private Networks properly terminates the Agreement under this provision, the City shall reimburse Unite Private Networks a prorated portion of the License Fee based upon the number of years left in the Term.

(iii) Unite Private Networks may terminate this Agreement for any reason upon sixty (60) days written notice. Under this provision, the City shall not be required to reimburse Unite Private Networks for any portion of the License Fee.

(iv) In the event of termination of this Agreement under its terms for any reason, Unite Private Networks shall remove all Fiber Optic Cable and Equipment installed by Unite Private Networks in the City Conduit within one-hundred eighty (180) days after the effective date of the termination. All costs of any kind arising from removal of Unite Private Networks' Fiber and Equipment shall be borne entirely by Unite Private Networks.

10. General Provisions

10.1 Notices

(i) All notices required or permitted to be given to either party by the other party under any provisions of this Agreement shall be in writing. Notice shall be deemed served when delivered by hand or sent by a nationally recognized overnight courier service to the other party's address set forth below during normal business hours. If a Notice is mailed, service is deemed complete upon the earlier of actual delivery or the close of business on the third business day following the date when the Notice is placed in a receptacle regularly maintained by the U.S. Postal Service addressed to the party at the address set forth below with postage pre-paid.

(ii) Notices shall be given to the following:

If to the City:

City of West Des Moines
Attn: Deputy City Manager
4200 Mills Civic Pkwy
West Des Moines, IA 50265-0320

With a copy to:

City of West Des Moines
Attn: City Attorney
4200 Mills Civic Pkwy
West Des Moines, IA 50265-0320

If to Unite Private Networks

Unite Private Networks
Attn: XXXXXXX
120 W 12th Street, Floor 11
Kansas City, MO 64105

With a copy to:

xxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxx

Or to such other addresses and persons as Unite Private Networks or the City may hereafter designate in a notice given in accordance with this Section 10.1.

10.2 Amendments. This Agreement may be administratively amended by mutual written agreement of the Parties.

10.3 Integration. This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement. The parties agree that if a Schedule, Addendum, Rider or Exhibit or other document is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference

10.4 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit Unite Private Networks and City.

10.5 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint utility, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

10.6 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the invalid portion shall be severed from this Agreement. Such a determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

10.7 Further Assurances and Corrective Instruments. Unite Private Networks agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

10.8 Non-Waiver. Failure of the City to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or any authorization granted hereunder terminated, or to exercise any right or privilege hereunder, shall not be construed as a continuing or future waiver of such term, condition, right or privilege, but the same shall be and remain at all times in full force and effect.

10.9 Headings. All headings contained in this agreement are for convenience only and are not intended to affect the meaning or interpretation of any part of this Agreement.

10.10 Governing Law. This Agreement and the rights and obligations contained in it shall be construed in accordance with, and governed by, the laws of the State of Iowa without regard to its choice of law provisions. Without limiting the preceding, this Agreement is intended by the parties to comply with Iowa Code Chapter 480A and shall be interpreted and construed in accordance with such intent.

10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.12 Legal Capacity. Both parties represent and warrant that they have the legal capacity to enter into this Agreement and that no Applicable Law prevents the execution and enforcement of this Agreement.

10.13 Approval of City. This Agreement shall not be binding until they have received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Agreement by the City Clerk.

10.14 Venue. Venue for any complaint, cause, case or action arising from or related to this Agreement shall be in the State of Iowa, County of Polk.

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

CITY OF WEST DES MOINES, IOWA, an Iowa municipal corporation

_____
Russ Trimble
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2023, before me a Notary Public in and for said County, personally appeared Russ Trimble and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2023, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

Unite Private Networks

_____
Name:
Title:

STATE OF _____)
) SS
COUNTY OF _____)

This record was acknowledged before me this _____ day of _____, 2023, by _____ as _____ of Unite Private Networks, on behalf of whom the record was executed.

_____
Notary Public in and for said County and State

EXHIBIT A

Licensed Conduit

For the purposed of this Agreement, Licensed Condit shall mean:

Approximately 2,388 lineal foot of a single duct in a seven duct Local Access Conduit beginning near the intersection of Lincoln Street and South 1st Street (Iowa 28), running along the west right-of-way of South 1st Street, under the Raccoon River. (See depiction below).

EXHIBIT B — INSURANCE REQUIREMENTS

Insurance Requirements

Unite Private Networks shall obtain and maintain through the term of this agreement *and two years beyond,* insurance with terms and limits of coverage equal to or in excess of those set forth in the specifications governing the services provided, but in no event, are such terms and limits to be less than those set forth below. The limits under insurance policies required by this Agreement shall in no-way limit the Unite Private Networks actual liability.

(1) Commercial General Liability

Including coverage for premises and operations, independent contractors, products & completed operations, contractual liability, explosion, collapse and underground hazards (XCU), personal injury/advertising injury. The City shall be included as additional insured on a primary and non-contributory basis, including waiver of subrogation in favor of the City.

Bodily Injury & Property Damage - Each Occurrence	$1,000,000
Personal Injury & Advertising Injury - Per Person	$1,000,000
General Aggregate on the Above	$2,000,000
Products & Completed Operations General Aggregate	$2,000,000
Fire Damage Limit	$100,000
Medical Expense Limit	$5,000

(2) Business Automobile Liability Insurance

Including coverage for all owned, non-owned and hired automobiles with limits of liability not less than the following. The City shall be included as additional insured on a primary and non- contributory basis, including waiver of subrogation in favor of the City. The limit can be satisfied by providing a primary policy or in combination with an excess liability policy.

Bodily Injury & Property Damage — Each Accident $1,000,000

(3) Workers' Compensation and Employers Liability

As required by any applicable law or regulation. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Part 1- Workers Compensation Statutory Benefits

(4) Employers Liability:

Bodily Injury Each Accident	$500,000
Bodily Injury by Disease Policy Limit	$500,000
Bodily Injury by Disease Each Employee	$500,000

(5) Umbrella Liability

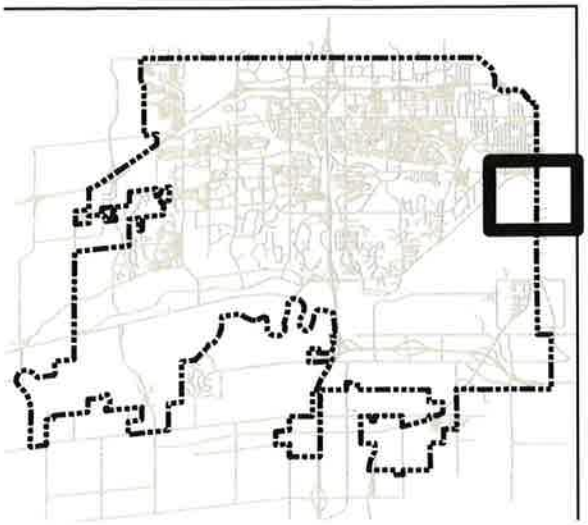
Unite Private Networks will maintain umbrella liability insurance on an occurrence basis in excess of the general liability, automobile liability and employer's liability insurance described above which is at least broad as all underlying policies; including but not limited to Additional Insured and Waiver of Subrogation and Primary and Non-Contributory

Each Occurrence Limit	$2,000,000
Aggregate Limit	$2,000,000

Before providing any services, Unite Private Networks shall make available to the City, proof of insurance showing adequate insurance, per this Agreement, to be in force.

Any subcontractors utilized shall be subject to the same insurance requirements above.

VICINITY MAP



Length of 7-way Microduct conduit between points A and B is 2,388 feet.

THE CITY OF WEST DES MOINES