

## ENCROACHMENT LICENSE AGREEMENT

**THIS ENCROACHMENT LICENSE AGREEMENT** ("Agreement") is made and entered into at Erie, Colorado this \_\_\_\_ day of September, 2017, by and between the TOWN OF ERIE, a Colorado municipal corporation ("Town") and UNITE PRIVATE NETWORKS, LLC, a Delaware Limited Liability Company ("Owner").

### RECITALS

A. Owner is the owner of **fiber optic cable facilities to be installed within the public right of way** in Town of Erie, County of Weld, State of Colorado ("Owner's Property").

B. Town is the owner of certain real property and right-of-way situate in the County of Weld and County of Boulder, State of Colorado ("Town's Property").

C. A portion of the Owner's improvements ("Improvements") used in connection with the fiber optic cable facilities within the public right of way ("Project") encroaches under, over, through, and on the Town's Property (the "Encroachment"), as shown on the attached Exhibit "A," incorporated herein by reference.

D. The Town has agreed to grant to Owner a personal privilege to maintain the Encroachment described above under, over, through, and on the Town's Property, all in accordance with, and subject to the terms, conditions and limitations of, this Agreement.

1. Grant of License. The Town hereby grants to the Owner the personal privilege and permission to enter upon the Town's Property and to maintain the Encroachment described above under, over, through, and on the Town's Property subject, however, to the terms, conditions and limitations of this Agreement (the "License"). The License herein granted shall be subject to all existing utility easements, if any, located on or under the Town's Property.

2. Term. This Agreement and the License granted to Owner hereunder shall commence as of the date of this Agreement and shall continue until terminated pursuant to Paragraph 12 of this Agreement.

3. Consideration. The consideration to be paid by the Owner to the Town for the License and privilege granted by this Agreement shall be One Thousand Dollars (\$1,000.00), receipt of which is hereby acknowledged by the Town, and other good and valuable consideration as herein provided.

4. No Interest In Land. Owner understands, acknowledges and agrees that neither the License nor this Agreement create an interest or estate in Owner's favor in the Town's Property. The Town retains legal possession of the full boundaries of Town's Property and the License and this Agreement merely grant to the Owner the personal privilege to maintain the Encroachment described above throughout the term of this Agreement.

Notwithstanding the expenditure of time, money or labor by the Owner on the Encroachment and the Improvements, the License and this Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Owner. Owner shall expend any time, money or labor at Owner's own risk and peril.

5. Limited Scope of License. The License granted to the Owner is limited in scope to the following permitted use or uses: installation, operation, and maintenance of fiber optic cable facilities. Owner shall not have the right to expand the License, the Encroachment, Improvements, or Owner's use of the Town's Property or to alter or change the Owner's use of the Town's Property.

6. Record Drawings. No more than sixty (60) days after construction of the Improvements, Owner shall provide to the Town detailed Digital Record Drawings in conformance with the Town's Standards and Specifications for Town review and acceptance.

7. Improvement Monumentation. During construction, at all locations where the Improvements enter or exit the Town's Property, permanent at and above grade monumetation and marking shall be placed in a manner and at a location approved by the Town's Public Works Director. Owner shall maintain all monumentation and marking in accordance with Paragraph 15 of this Agreement for as long as this License is in effect.

8. Improvement Mapping. Prior to the Town issuing a Right-of-Way or Public Improvement Permit for the construction of the Improvements, Owner shall provide detailed maps of the Improvement for the entirety of the Project within Town limits, regardless of whether it is located on the Town's Property.

9. Use of Licensed Premises By Others. Owner may permit Owner's employees, business invitees, contractors, tenants, subcontractors, lessees, agents, customers and others to use the portion of the Town's Property for which the License and this Agreement has been executed.

10. Transfer or Assignment of License. Neither the Agreement nor the License granted to Owner herein is transferable or assignable by Owner without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed. Such consent, if granted by the Town, shall be conditioned upon the transferee's or assignee's assumption, in writing in a form acceptable to Town, of all of Owner's obligations hereunder. Such transferee or assignee shall acquire nothing more than the personal privilege herein granted to Owner. Further, the rights of any transferee or assignee shall be subject to termination in accordance with the provisions of this Agreement.

11. Default. In the event either party materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of the nature of such default. Within fifteen (15) days following receipt of such notice the defaulting party shall correct such default; or, in the event of a default not capable of being corrected within fifteen (15) days, the defaulting party shall commence correcting the default within fifteen (15) days of receipt of notification thereof and thereafter correct the default with due diligence. If the defaulting party fails to correct the default as provided hereinabove, the non-defaulting party, without further notice, shall have the right to declare that the License and this Agreement are terminated pursuant to Paragraph 12 hereof effective upon such date as the non-defaulting party shall designate. The rights and remedies provided for herein may be exercised singly or in combination.

12. Termination. This Agreement and the License herein granted to Owner is fully terminable in accordance with the following terms and conditions:

a. Termination Upon Notice To Owner. This Agreement, and the License herein granted to Owner, may be terminated by Town, at the Town's sole discretion, without liability for breach of this Agreement by the giving of ninety (90) days' advance written notice to Owner. The notice provision established by this paragraph 12(a) shall conclusively be deemed to be reasonable.

b. Termination Upon Destruction Or Removal Of Improvements. In the event that Owner's Improvements which encroach onto the Town's Property are destroyed or are permanently removed, this Agreement, and the License herein granted to Owner, may be terminated by Town upon not less than thirty (30) days' advance written notice to Owner.

c. Termination Upon Default. This Agreement and the License herein granted to Owner may be terminated by either party upon the material default of the other party in the performance of the material covenants or agreements of this Agreement in accordance with the revisions of Paragraph 11 of this Agreement.



d. Recording Of Notice Of Termination. Upon termination of the License and this Agreement the Town may cause to be recorded with the Clerk and Recorder of Boulder/Weld County, Colorado a written Notice of Termination.

e. No Compensation To Owner. In the event of termination of the License and this Agreement for any reason, Owner shall not be entitled to receive a refund of any portion of the consideration paid for the License and this Agreement, nor shall Owner be compensated for any improvements which must be removed from the Town's Property.

13. Permanent Removal Of Encroachment Upon Termination. At such time as this Agreement and the License herein granted to Owner is terminated, upon the Town's written request, the Owner shall remove, at Owner's sole expense, any and all Encroachments owned or maintained by Owner on the Town's Property.

14. Insurance. Owner shall obtain and maintain at all times during the term hereof, at Owner's sole cost, a policy or policies of comprehensive general liability insurance with limits of coverage of not less than \$1,000,000 for injuries, damages or losses sustained by any one person in any one accident or event, and not less than \$1,000,000 for injuries, damages or losses incurred by two or more persons in any one accident or event. The Town shall be named as an additional insured on all such policies and Owner shall furnish the Town with a copy of such policy or policies prior to the effective date hereof. Notwithstanding anything contained herein to the contrary, Town may terminate this Agreement, and the License herein granted to Owner, in accordance with the provisions of Paragraphs 8 and 9 of this Agreement, if Owner fails to procure and maintain the insurance required by this Paragraph 14. If at any time while the Agreement is in effect, the limits of liability for local governments under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., are raised above the limits of liability provided hereinabove, Owner's insurance requirement provided in this Paragraph 14 shall be increased accordingly.

15. Maintenance. During the term of this Agreement the Owner shall, at Owner's sole expense, maintain the Improvements which encroach onto the Town's Property in safe and good condition as solely determined by the Town.

16. Owner's Waiver Of Claims Against Town. As a part of the consideration paid by Owner for the License and this Agreement, Owner hereby waives any and all claims which Owner may or might hereafter have or acquire against Town for loss or damage to the Owner's Improvements which encroach onto the Town's Property arising from the use by the Town, or the public, of the Town's Property for any purpose.

17. Indemnification. Owner agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and insurer, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the use of the Town's Property pursuant to the License and this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence of Owner, any contractor or subcontractor of the Owner, or any officer, employee, tenant, agent, customer, or representative of the Owner, or of any person permitted or allowed to use the Town's Property by Owner, or which arise out of any worker's compensation claim of any employee of the Owner or of any subcontractor of the Owner or of any tenant of Owner; except to the extent such liability, claim or demand arises through the negligence of Town, its officers, employees or agents. Owner agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Owner. Owner also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees.

18. Mechanics' Liens. Owner shall not allow any mechanics' or similar liens to be filed against the Town's Property arising from any work done by Owner on the Town's Property, and Owner shall indemnify and hold Town harmless with respect thereto, including any attorney's fees incurred by Town in connection with any such lien or claim. If any mechanics' or other liens shall be created or filed against the Town's Property by reason of labor performed by, or materials furnished for, the Owner, the Owner shall, within ten (10) days thereafter, at the Owner's

own cost and expense, cause such lien or liens to be satisfied and discharged of record together with any Notices Of Intention To File Mechanic's Lien that may have been filed. Failure to do so shall constitute a default hereunder for which the Town may terminate this Agreement in accordance with the provisions of Paragraphs 11 and 12 of this Agreement.

19. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following:

If To The Town:

Town Administrator  
Town of Erie  
P.O. Box 750  
Erie, Colorado 80516

If To The Owner:

VP Real Estate/ROW  
Unite Private Networks, LLC  
7200 NW 86<sup>th</sup> Street, Suite M  
Kansas City, MO 64153

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given upon mailing. Notices personally delivered shall have been deemed to have been given upon delivery. Either party may change its address by giving notice thereof to the other party in the manner provided in this Paragraph 19.

20. Attorney's Fees. If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

21. Waiver. The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

22. Governmental Immunity. The parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other law or limitations otherwise available to Town, its officers, or its employees.

23. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. Any such prior agreement shall be deemed to be null and void and of no further effect.

24. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

25. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

26. Terminology. Wherever applicable, the pronouns in this Agreement designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

27. Authority Of Town. This Agreement is entered into pursuant to a Resolution of the Board of Trustees of the Town of Erie, Colorado adopted \_\_\_\_\_, 2017.



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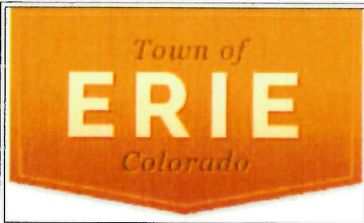
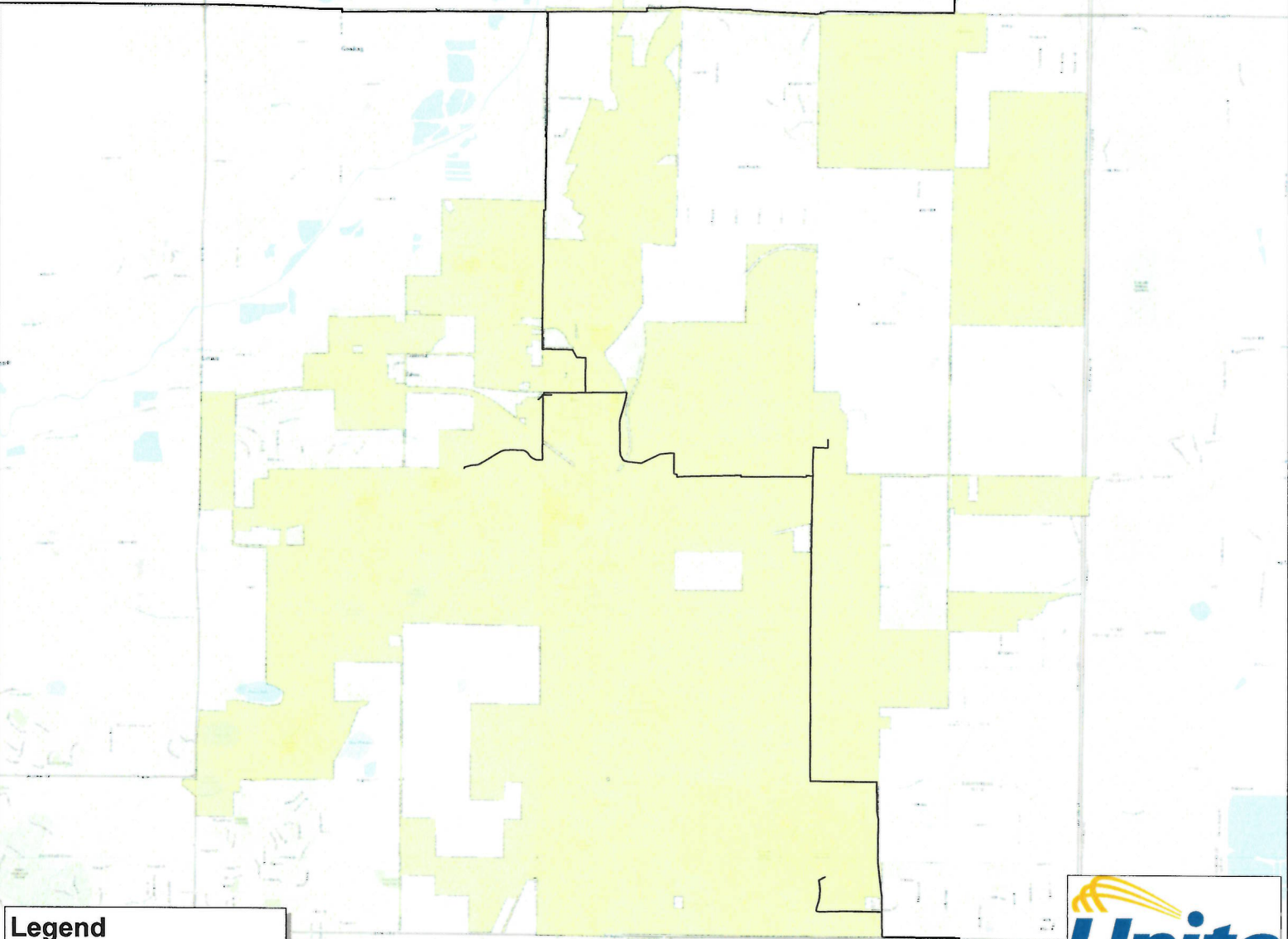
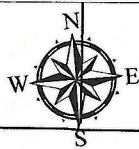


Exhibit A



**Legend**

— UPN Owned Fiber Cable

■ Town of Erie Limits

