

Wide Area Network Leasing and Services Agreement

between

Unite Private Networks, LLC
120 W. 12th Street, Floor 11
Kansas City, MO 64105

and

Raytown C-2 School District
6608 Raytown Road
Raytown, MO 64133

UPN ID: 40175

Dated _____, 2023

Wide Area Network Leasing and Services Agreement

This Wide Area Network Leasing and Services Agreement is entered into as of the first date listed above by and between the Raytown C-2 School District (the “District”) and Unite Private Networks, LLC (“UPN”). The District and UPN may each hereinafter be referred to individually as a “Party” and together as the “Parties.”

Recitals

A. UPN is in the business of leasing Wide Area Network facilities (“WAN Facilities”) and providing telecommunications and Internet access services (“WAN Services”) to school districts and other customers.

B. Following a competitive bidding process, the District selected UPN as the most cost-effective provider of leased WAN Facilities and WAN Services to the District.

C. The District has received all approvals required by it to enter into this Agreement, under which UPN will lease WAN Facilities and provide WAN Services to the District.

D. The Parties previously entered into a Wide Area Network Leasing and Services Agreement on January 17, 2011 and renewed on January 7, 2022 for a ten (10) year term the “2011 Agreement”). It is the Parties intention that this Agreement will run conterminously with the 2011 Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and UPN agree as follows:

1. WAN Facilities and WAN Services. UPN agrees to lease WAN Facilities and provide WAN Services to the District in accordance with the terms of this Agreement, as more fully described in Schedule A attached hereto. This Agreement shall operate as a lease under applicable law. Nothing in this Agreement shall be construed to result in the transfer of title to or creation of a security interest in any part of the WAN Facilities. For clarity, UPN owns the WAN Facilities and will continue to own the WAN Facilities following the expiration or termination of this Agreement. The District disclaims any interest it may claim in UPN’s facilities, materials, equipment, fiber optic cable, and other property installed on the real property of the District. The District shall keep the WAN Facilities free from all liens. The District’s use of the WAN Facilities and WAN Services shall be limited to the District. The District may not assign, lease, or allow any other party the right to use the WAN Facilities or WAN Services without UPN’s prior written consent. Any other use shall constitute an event of default under Paragraph 11(a).

2. Agreement Term. This Agreement will have a term of approximately nine (9) years expiring on June 30, 2032 and commencing upon complete installation of all WAN facilities and delivery of all WAN Services described herein. This Agreement can be extended upon mutual

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agreement of UPN and the District for a term no longer than the initial term memorialized in this Section 2.

3. E-Rate Program. Upon request, UPN will work with the District to participate in the Schools and Libraries Program of the Universal Service Fund (the “E-Rate Program”) in an effort to maximize discounts available to the District with respect to the WAN Facilities and WAN Services. However, the District’s participation in the E-Rate Program is not a condition to either Party’s obligations under this Agreement.

4. Changes. Any changes to the WAN Facilities, the WAN Services, including additional services provided by UPN, will be set forth in a Statement of Understanding signed by the District and UPN.

5. Additional Sites and Upgrades. This Agreement contemplates the possibility of additional services and service upgrades during the course of this Agreement. If the District elects to add or upgrade services under this Agreement, the changes will be noted in a Statement of Understanding. All additional services and upgrades will have a term that is coterminous with this Agreement. The Parties agree that additional circuits and/or upgrades will be billed as a one-time cost for equipment installation and construction costs plus a monthly recurring charge that is commensurate with the Monthly Fees noted in Schedule C.

6. Delivery and Installation. UPN will deliver, install, configure, and maintain the WAN Facilities, and the Parties agree to coordinate and cooperate to schedule and facilitate all delivery, installation, configuration, and maintenance activities. Without limiting the generality of the foregoing, the Parties agree as follows:

(a) Staging, Storage, and Access. During the installation of the WAN Facilities, the District agrees to provide UPN (i) suitable staging and storage areas at District facilities for relevant equipment, materials, and components and (ii) access to District facilities as may be necessary to efficiently complete the installation, as reasonably determined by UPN, provided that UPN must schedule such access with the District in advance. District personnel may accompany UPN personnel during installation work at any District facility.

(b) Substitute Materials. In the event that any materials or components of or relating to the WAN Facilities are not available for timely delivery and installation, UPN may substitute materials or components of equivalent or superior functionality and performance.

(c) Site Preparation. Prior to the installation of WAN Facilities, the District will clean and otherwise prepare all installation sites and will continue to maintain those sites (but not, for clarity, the WAN Facilities) following such installation.

(d) Debris Removal. UPN will remove from installation sites all debris resulting from the installation of WAN Facilities, including moving such debris to trash

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receptacles maintained by the District. The District will be responsible for trash removal from such receptacles.

(e) Landscaping. UPN will restore all landscaping disturbed by UPN's installation, maintenance, or removal activities. The District will be responsible for all landscape watering, including at restored landscaping sites.

(f) Non-WAN Facilities. The District is responsible for the installation, configuration, and maintenance of all facilities and components that are not WAN Facilities. At the District's request, UPN may install, configure, and maintain such facilities and components, subject to UPN's standard charges, terms, and conditions.

(g) Special Needs. If additional labor or materials are needed to install or maintain the WAN Facilities due to unusual site requirements or other special needs or characteristics of the District or its facilities, as reasonably determined by UPN and agreed to by the District, the District will reimburse UPN for any corresponding extra costs incurred by UPN to address those requirements, needs, or characteristics.

(h) Planning. UPN and the District will meet prior to the installation of the WAN Facilities to formulate and finalize the installation methodology and configuration design for the WAN Facilities.

(i) Deviations. If, prior to or during the installation process, UPN, in its reasonable judgment, deems it necessary or prudent to deviate from the final installation methodology and design in a material way, it will present such deviation to the District for its approval, which the District may not unreasonably withhold or delay; provided, however, that UPN reserves the right to make, without such approval, changes to fiber routing, conversions from underground to overhead or overhead to underground configuration to avoid obstructions, and other immaterial modifications.

(j) Timeline. UPN and the District agree to the installation and configuration timeline set forth in Schedule B. The District agrees to all reasonable extensions of the installation timeline necessitated by actions or inactions of the District or otherwise resulting from circumstances beyond UPN's control.

(k) Maintenance. UPN is responsible for maintaining the WAN Facilities. The District agrees to provide UPN with access to its facilities as may be necessary to perform maintenance, as reasonably determined by UPN, provided that, when practicable, such access must be scheduled with the District in advance. District personnel may accompany UPN personnel during any maintenance work at any District facility.

(l) Service Commencement Letter. Upon completion of the installation, the District will receive a Service Commencement Letter from UPN that states the WAN Services have been tested and are operational. For clarity, the final Service Commencement Letter will mark the beginning of the term noted in Section 2 above and confirm that all UPN testing has been completed satisfactorily.

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(m) Assigned District Personnel. The District agrees to provide an individual to escort UPN personnel or subcontractors while on District property in order for UPN to perform the installation required for the WAN Services provided under this Agreement.

7. Fees and Payment. The District will pay for the leased WAN Facilities and the WAN Services in the amounts set forth on Schedule C attached hereto and in accordance with the following:

(a) Partial Fees. In the event any fees are payable on a monthly basis (or otherwise on a regular schedule), the fee for any partial month (or other relevant period) will be pro-rated accordingly.

(b) Due Dates and Late Payment Charges. All fees will be paid no later than thirty (30) days following the payment date specified on Schedule C or following the receipt of an invoice from UPN. If any payment obligation of the District is more than thirty (30) days past due, such amount shall accrue interest from the date such payment is due until paid, including accrued interest compounded monthly, at a rate equal to one and one half percent (1.5%) per month. The District understands that the Term of this Agreement is firm and the District's obligation to make payments shall not be impacted by the District's actual usage of the WAN Services.

(c) Changes in WAN Facilities and WAN Services. If, pursuant to Section 4 above, the WAN Facilities or WAN Services are changed or upgraded, the Parties will agree on an appropriate adjustment or supplement to the fees set forth on Schedule C.

(d) Taxes and Additional Charges. All applicable taxes and fees including, but not limited to, federal, state, local use, excise, gross receipts, sales or privilege taxes, occupation taxes, duties, regulatory fees, or similar liabilities charged to or against UPN or the District because of the services furnished by UPN shall be assessed to and paid by the District. The District shall be required to provide documentation evidencing its exemption from any such taxes or fees.

(e) Billing Method. Until the District receives its Funding Commitment Decision Letter ("FCDL") from USAC, UPN will invoice under the Billed Entity Applicant Reimbursement Method ("BEAR Method"), which is the total amount before applying the District's USAC discount. Upon the District's notification to UPN of an affirmative FCDL, the District may request that UPN provide its billing method option letter to allow the District to choose its preferred method of billing. UPN will invoice the District using the BEAR Method until the District fulfills all UPN requirements to elect another USAC-approved payment method.

8. District Agreements and Acknowledgements. The District agrees as follows:

(a) Adequacy of WAN Services. The District acknowledges that the WAN Facilities and WAN Services described in Schedule A meet the District's requirements.

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(b) Security. The District is responsible for providing commercially reasonable security at or on District facilities or properties where WAN Facilities are installed.

(c) Compliance with Law. UPN and the District agree that the WAN Services and WAN Facilities shall not be used in a manner that could be construed as a violation of this Agreement, laws, regulations, orders, or rules of any governmental authority having jurisdiction.

(d) District Personnel. The District will ensure that its personnel, contractors, and users are educated and trained in the proper use and operation of the WAN Facilities for the WAN Services.

(e) Space and Power. The District will provide all necessary space and power required for the installation and operation of the WAN Facilities at each District location.

(f) Authority; Non-Violation. The District represents and warrants that the execution, delivery, and performance of this Agreement does not and will not conflict with, breach, or otherwise violate any of the organizational or governing documents of the District or any agreement or instrument to which the District is a party or by which the District is bound.

(g) Insurance. The District will procure and maintain insurance policies covering all loss and damage to the WAN Facilities located at facilities under the District's control, including without limitation all materials and components located at District facilities prior to, during, or after the installation process. The District will cause such insurance policies to (i) name UPN as an additional insured, (ii) be endorsed to require at least thirty (30) days' written notice to UPN prior to the effective date of any termination of coverage, and (iii) provide that the insurer(s) will have no rights of recovery against UPN in the event of any payment of any loss or damage. Upon request by UPN, the District will provide proof of insurance meeting the requirements of this Section 8(g).

(h) Intrastate Traffic. The District certifies that for the duration of this Agreement, including renewals, the average interstate traffic (including Internet and international traffic) will constitute ten percent (10%) or less of the total traffic on the WAN Facilities provided by UPN. The District is responsible for notifying UPN if the District's average usage exceeds this 10% threshold.

9. UPN Warranties and Disclaimers. Subject to Section 17(i) below, UPN agrees as follows:

(a) Compliance with Law. UPN represents and warrants that it will comply with all applicable laws.

(b) Authority; Non-Violation. UPN represents and warrants that (i) this Agreement has been duly authorized, executed, and delivered by UPN, and (ii) the execution, delivery, and performance of this Agreement do not and will not conflict with,

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breach, or otherwise violate any of the organizational or governing documents of UPN or any agreement or instrument to which UPN is a party or by which UPN is bound.

(c) Non-WAN Facilities and Services. UPN makes no representation or warranty whatsoever regarding services, facilities, or components that are not provided by UPN under this Agreement.

(d) Disclaimer. UPN MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, REGARDING THE WAN FACILITIES OR WAN SERVICES AND SPECIFICALLY DISCLAIMS ANY WARRANTY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE ENFORCEMENT OF ANY MANUFACTURER'S WARRANTIES AND GUARANTEES. No defect, unfitness, or other condition of WAN Facilities or WAN Services shall relieve the District of the obligation to perform any obligations under this Agreement.

10. Alterations and Attachments. The District may not make any alterations or attachments to the WAN Facilities without UPN's prior written consent. UPN shall have no maintenance or other obligations whatsoever with respect to any alterations or attachments the District makes to the WAN Facilities. If UPN provides any maintenance or other services in respect of any such alterations or attachments, UPN will provide such services subject to its standard charges, terms, and conditions. UPN is not responsible for any malfunction or performance issues related to the WAN Facilities or WAN Services, or any inability of UPN to satisfy its obligations under this Agreement, caused by, or resulting from, any action or inaction by the District. The District is solely responsible for, and agrees to indemnify UPN against, all claims and damages caused by, or resulting directly or indirectly from, any alteration or attachment made to the WAN Facilities by the District.

11. Termination. Either Party may terminate this Agreement for cause by giving written notice to the other party, and this Agreement will be terminated immediately upon such notice, as follows:

(a) By UPN. UPN may terminate this Agreement for cause in the event of (i) the District's failure or refusal to make any payment due to UPN hereunder within ten (10) days after the District receives written notice from UPN of such failure or refusal, or (ii) the District's continuing failure or refusal to perform any material obligation under this Agreement, subject to a reasonable cure period not to exceed thirty (30) days, or (iii) illegal, unethical, or other acts of the District tantamount to misconduct.

(b) By the District. The District may terminate this Agreement for cause in the event of (i) UPN's continuing failure or refusal to perform any material obligation under this Agreement, subject to a reasonable cure period, or (ii) UPN's violation of applicable laws or regulations related to its performance under this Agreement, subject to a reasonable cure period.

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For clarity, upon the termination of this Agreement under Section 11(a), UPN will be entitled to recover all fees that would have been payable to UPN under this Agreement for its full term. The Parties agree that such fees are to be construed as liquidated damages and not a penalty.

By executing the Agreement, the District warrants that the District has funds appropriated and available to pay all amounts due hereunder through the end of the District's current fiscal period. The District further agrees to request all appropriations and funding necessary to pay for the WAN Services for each subsequent fiscal period through the end of the Agreement Term. In the event funds are not appropriated, budgeted or otherwise made available, this Agreement shall be terminated on the last day of the period for which funds were appropriated or monies made available for such purposes and the District shall have no further obligation hereunder upon the following conditions: (i) the District has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite the District's best efforts, funds have not been appropriated and are otherwise unavailable to pay for the WAN Services; and (iii) the District has negotiated in good faith with UPN to develop revised terms, an alternative payment schedule or a new agreement to accommodate the District's budget. The District must provide UPN thirty (30) days' written notice of its intent to terminate WAN Services. Termination of the WAN Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If the District terminates the WAN Services under this Paragraph, the District agrees as follows: (i) it will pay all amounts due for WAN Services incurred through date of termination, and reimburse all unrecovered non-recurring charges, including actual construction cost to be verified by UPN through the submittal of invoices to the District; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Agreement Term.

12. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, UPN may remove any WAN Facilities and the District agrees to cooperate in any such removal by UPN.

13. Confidential Information. Each Party acknowledges (a) that it will have access to confidential information of the other Party, (b) that such information constitutes valuable, special, and unique property of the other Party, and (c) that no right or license is granted to such Party with respect to such information, except as specifically set forth in this Agreement. Each Party agrees that it will not at any time, in any manner whatsoever, whether directly or indirectly, disclose to any person or entity, or use, any confidential information of the other Party, except as required by law or as necessary for the performance or enforcement of this Agreement. For purposes of this Agreement, the term "confidential information" means all non-public and proprietary information that is disclosed or made available, including, without limitation, the terms of this Agreement and any non-public information concerning a Party's business, operations, plans, processes, products (including related manuals and support materials), systems, marketing information, diagnostics, specifications, know-how, personnel, patrons, students, or data of any kind. Each Party will ensure that its employees and other representatives comply with the confidentiality obligations under this Agreement. Each Party agrees that it will not copy the confidential information of the other Party other than as necessary to perform under this Agreement. Upon request, or upon the termination or expiration of this Agreement, each Party agrees to return or destroy any confidential information of the other Party in its possession. The Parties acknowledge that remedies at law may be

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inadequate to protect against any actual or threatened breach of the confidentiality obligations under this Agreement, and, without prejudice to any other rights and remedies otherwise available, agree to the granting of injunctive relief without proof of actual damages. The Parties agree that this Section 13 will survive the termination or expiration of this Agreement.

14. Independent Contractor Status. Nothing contained herein may be construed as making the Parties partners or joint venturers or creating a principal and agent relationship. Neither Party has any authority to create any obligation or responsibility on behalf of, or in the name of, the other Party.

15. Notices. Any notice, demand, waiver, or consent under this Agreement must be in writing and delivered by electronic mail or by prepaid registered or certified mail (with return receipt requested), or by a national overnight courier service, addressed as follows:

If to UPN:	Unite Private Networks, LLC Attn: Legal Department 120 W 12 th Street, Floor 11 Kansas City, MO 64105 legaldept@upnfiber.com Phone: 816-903-9400
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If to the District:	Raytown C-2 School District Attn: _____ 6608 Raytown Rd Raytown, MO 64133
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Copy to:	_____ _____ _____
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All such notices, demands, waivers, and consents will be effective upon receipt or refusal of delivery, whichever occurs first. Either party may change its address or contact information for purposes of this Section 15 by giving notice to the other party in accordance with this Section 15.

16. Force Majeure. Neither Party will be liable for the failure to fulfill its obligations under this Agreement 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; damage to fiber or facilities caused by a third party; and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Furthermore, neither Party will be liable for delays caused by the inaction of utilities, local exchange carriers, cities, municipalities,

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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 WAN Facilities.

17. Miscellaneous.

(a) Waivers. Any failure or delay by either Party in exercising any right or remedy under this Agreement will not constitute a waiver of that right or remedy. Any waiver by either Party of any right or remedy under this Agreement must be in writing and signed by the Party waiving the right or remedy.

(b) Governing Law. The laws of Missouri govern this Agreement, without regard to conflicts of law principles. The Parties agree that any action related to this Agreement shall be brought under the jurisdiction and venue of the state of Missouri regardless of the appropriateness of any other jurisdiction.

(c) Entire Agreement. This Agreement, including the schedules attached hereto, constitutes the entire contract between the parties with respect to the subject matter hereof, and supersedes any and all other prior agreements or understandings, written or oral, including any and all documents exchanged between the parties in any competitive bidding process for the WAN Facilities and the WAN Services (or similar facilities and services).

(d) Amendments. Any amendment to this Agreement must be in writing and signed by both Parties.

(e) Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which may not be unreasonably delayed or withheld. Notwithstanding the preceding sentence, UPN may, without the District's consent, (i) assign its rights and obligations under this Agreement to an affiliate, (ii) assign its right to receive payments under this Agreement to any creditor, and (iii) assign its rights and obligations under this Agreement to an entity acquiring all or substantially all of UPN's assets. Any purported assignment prohibited by this provision will be null and void.

(f) Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and permitted assigns of the Parties.

(g) Headings. The headings contained in this Agreement are for convenience of reference only and may not be utilized in construing or interpreting this Agreement.

(h) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but which together will constitute but one and the same instrument.

(i) Limitations on Damages. UPN will not be liable to the District for any indirect or consequential damages, including but not limited to lost profits or business

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revenue, lost business, failure to realize expected savings, lost or damaged data, other commercial or economic loss of any kind, whether or not such damages are foreseeable.

(j) Construction. This Agreement is to be construed as the joint and equal work product of the Parties and may not be interpreted more or less favorably in respect of either Party on account of its preparation or drafting.

(k) Delivery by Email Transmission. This Agreement may be delivered by electronic transmission of signed signature pages.

(l) Severability. In the event that any term or provision of this Agreement is held invalid or unenforceable by any court having jurisdiction over this Agreement, (i) the portion(s) of the Agreement ruled invalid or unenforceable and all related provisions shall be addressed by the Parties via an amendment that shall substitute valid and enforceable provisions; and (ii) it will not affect the validity or enforceability of the remaining terms and provisions of this Agreement not otherwise addressed within the amendment.

(m) Waiver of Jury Trial. Each Party waives trial by jury with respect to any dispute regarding or arising under this Agreement.

(n) Time Limit for Legal Actions. All legal action, regardless of its form, relating to or arising under this Agreement must be commenced within the requisite period of time required for such action under the applicable state Statute of Limitations.

(o) Dispute Resolution. Each Party agrees to work in good faith with the other party in an effort to resolve the disputed matter prior to pursuing formal legal remedies.

(p) Bond Contingency. The Parties agree and understand that the District is seeking bond monies to support the services requested herein. It is anticipated that the District will have notification whether the bond initiative will be successful on or about April 15, 2023. The Parties agree that UPN shall not commence construction work under this Agreement until the bond initiative is approved by voters and the District has provided UPN with a written Notice to Proceed (“NTP”) indicating that it is ready for UPN to begin construction efforts. If customer fails to provide UPN with NTP by April 15, 2023, Customer acknowledges and agrees that UPN shall not be liable for any delays in the anticipated delivery of services on July 1, 2023. Additionally, if the bond initiative does not pass a popular vote, the District will have a one-time opportunity to terminate this Agreement without termination penalties.

[Signature Page Follows]

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IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of each Party as of the day and year first above written.

Unite Private Networks, LLC

Name: _____

Title: _____

Raytown C-2 School District

Name: _____

Title: _____

Schedule A – WAN Facilities and WAN Services

WAN Facilities:

Digital transmission service provided by single mode fiber optic links to all schools as noted in the WAN Services section below. All facilities will have ten (10) Gigabit/second of transport.

WAN Services:

Ten (10) Gigabit Ethernet bandwidth capacity over single-mode fiber optic cable to the following District locations:

Circuit 1 - WAN			
<u>Location A</u>		<u>Location Z</u>	
Site Name	Raytown HS	Site Name	Raytown High School Gym
Address	6019 Blue Ridge Blvd Raytown, MO 64138	Address	39.012074, -94.460429 Raytown, MO 64133

Schedule B – Installation Timeline

Anticipated delivery of Internet Services under this Agreement shall occur approximately ninety (90) days after the receipt of customer’s NTP pursuant to section 17(p) above and UPN’s acquisition of all necessary permits, licenses, rights, and materials necessary to complete the project.

Schedule C – Fees and Payment Schedule

Non-Recurring Fees

The District shall remit to UPN a one-time fee of \$61,339.66 (\$32,967 for special construction and \$28,373 for leasing and installation of electronics).

Recurring Fees

The District shall remit monthly lease payments to UPN for the duration of the Term of the Agreement as follows:

1. **Monthly Fees.** Monthly lease payments of \$1,226.00.

Other Fees

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In accordance with Section 7(d), all applicable taxes and fees including, but not limited to, federal, state, local use, excise, gross receipts, sales or privilege taxes, occupation taxes, duties, regulatory fees or similar liabilities shall be paid by the District in addition to the regular charges under this Agreement unless the District provides sufficient evidence of its exempt status.

Additional Sites and/or Upgrades

If the District elects to add or upgrade services in accordance with Section 5, the Parties agree that these changes will be billed to the District as a non-recurring cost to cover incremental equipment and construction costs plus a recurring charge that is commensurate with the fees in this Schedule C, which will be codified in a Statement of Understanding to be signed by the Parties.