

**YUMANET
MAINTENANCE AGREEMENT
BETWEEN THE CITY OF YUMA, ARIZONA,
AND UNITE PRIVATE NETWORKS, LLC**

THIS AGREEMENT ("AGREEMENT") dated _____, 2019 for purposes of identification is made by and between Unite Private Networks, LLC ("Unite"), a Delaware limited liability company and the City of Yuma ("City"), Arizona, a municipal corporation of the State of Arizona, hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Unite is a party to a License Agreement with City which was approved by the Yuma City Council on September 18, 2013 ("License"), which requires Unite to dedicate fibers to the City with an irrevocable right of use of certain capacity on Unite's communications system by the City; and

WHEREAS, the License provides for the provision of certain fibers to the City, which fibers are referred to herein as the YumaNet; and

WHEREAS, Unite desires to enter into a commercial arrangement in this Agreement for future expansion and maintenance of the YumaNet; and

WHEREAS, to these ends, the parties have entered into that separate "Indefeasible Right of Use Agreement Between the City of Yuma and Unite Private Networks, LLC" (the "IRU Agreement") under which Unite has given the City an irrevocable right of use to use certain existing fibers, and fibers which may be installed pursuant to this Maintenance Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Definitions

(a) **Actual Cost**

Means out-of-pocket costs directly incurred in connection with a particular project, including without limitation materials, contractor expenses, labor (including actual cost of design), and taxes, but excluding overhead costs, determined as follows:

- (i) Where the work performed involves only installation or maintenance of facilities and equipment related solely to the YumaNet, Unite's actual costs in performing such work.
- (ii) Except where the installation or maintenance of the YumaNet falls within (a)(i), a ratable share of the actual cost of the work, with the City's percentage based on the number of YumaNet fibers, as compared to the total number of fibers installed. By way of example, if there are six YumaNet fibers installed in conjunction with 94 other

fibers, the City would be responsible for 6% of the actual cost incurred by Unite in maintaining the fiber.

(iii) Such other formula or amount as the parties may agree for a particular project.

(b) City Fibers

Has the same meaning as set forth in the IRU Agreement.

(c) Critical Functions

A YumaNet function directly impacting the public health and safety of the residents of the City of Yuma, including but not limited to police, fire, and emergency services and utility plant communications. Noncritical functions shall include all other functions, including non-emergency administrative communications and other city services.

(d) Demarcation Point

As defined in Section 2 of the IRU Agreement.

(e) Maintain, Maintenance

Interpreted broadly to include activities necessary to provide for continued reliable operation and connectivity of the YumaNet as it pertains to the physical plant, including but not limited to repair, replacement, relocation, undergrounding and maintenance. No active network components (switches, routers, etc.) are provided or maintained by Unite under this Agreement except as specifically provided herein.

(f) MDF or Main Distribution Frame

Normally, where all internal networking cable and/or fiber converge.

(g) MPoE or Main Point of Entry

Normally the main telecommunications closet where all cabling enters the building either via underground conduit or overhead.

(h) OTDR

Refers to the test equipment used to check the integrity of optical cable for signal loss and reflections. While as of the date of this Agreement, an Optical Time Domain Reflectometer is used for this purpose, the parties recognize that the appropriate test equipment may change over time; the obligation to use an OTDR will be interpreted to require use of the equipment and procedures used to check the integrity of fiber optical cable, consistent with best engineering practices.

(i) System, or Unite System

The network of cables and associated facilities and equipment installed by Unite in Yuma/CC.

- (j) **Unite Network**
The fiber optic cables and associated equipment, property and rights now existing or hereafter obtained pursuant to Unite's License with City, and that are not City Fibers.
- (k) **Yuma/CC**
Refers to the geographical area comprised of the areas within the municipal boundaries of the City of Yuma, and the boundaries of Yuma County, and the incorporated areas therein, as identified on Exhibit A to the IRU Agreement.
- (l) **YumaNet**
Has the same meaning as set forth in the IRU Agreement.
- (m) **YumaNet Hub(s)**
Points designated by the City where fiber from multiple locations are bridged and routed.

2. General Obligations with Respect to YumaNet

- (a) **In General**
Excluding the City Fibers granted under the IRU, upon the terms hereinafter stated, Unite shall install for the City, and the City shall pay for installation of fiber optical cable for future Yuma-Net construction. Upon the terms hereinafter stated Unite shall Maintain the YumaNet for the City.
- (b) **Cost**
There will be no additional charges by Unite during the term of this Agreement associated with the YumaNet, other than the charges in this Agreement.
- (c) **Maintenance**
 - (i) **Fee**
City shall be responsible for the Actual Costs for Maintenance to the YumaNet that it approves. Except in an Emergency, prior to starting any Maintenance on the YumaNet, Unite shall provide the City with a schedule to complete the Maintenance and a written quote of the Actual Costs for the Maintenance. Unite shall only commence such Maintenance upon prior written and signed approval by the City, which shall acknowledge City's acceptance of the Actual Costs. Notwithstanding the preceding, in an Emergency, if City does not respond with written approval within a reasonable timeframe, City's approval will be deemed granted and Unite may proceed with the Maintenance as submitted and City shall be responsible for the Actual Costs. For purposes of this Section, an "Emergency" means any situation where there is a loss or material reduction in network performance to a YumaNet Site or a Unite Network customer caused by a failure of the fiber network.

(ii) Responsibilities

(1) Unite shall:

- a. Maintain the optical fibers and all YumaNet-enabling physical plant between the respective Demarcation Points on the YumaNet, in accordance with manufacturers' specifications;
- b. Maintain the necessary hardware, facilities and structures on its side of the Demarcation Point so that signals may be transmitted, without losses that exceed manufacturer's specifications for the optical fibers, between and among points on the YumaNet and to devices or connections that may be attached to the YumaNet;
- c. Retain a vendor for emergency restoration purposes which will maintain inventories necessary to respond to emergencies within the area; and
- d. Conduct tests on the YumaNet as needed, such as when new or replacement plant is installed, or there is degradation in service quality or network throughput which may be due to Unite physical plant, or to the acts or omissions of Unite. The performance standards and procedures to be used in such tests are specified in Appendix C.
- e. Promptly repair or replace any portion of the City Fibers for which it has Maintenance responsibilities that it is notified is not functioning pursuant to Section 19(a), or that it becomes aware is not functioning.
- f. Replacement Fibers. At any time following the Effective Date, if any of the fibers constituting the YumaNet do not operate within the Fiber Specifications, and Unite has determined, in its reasonable business judgment, that it is technically or economically infeasible to restore one or more of the affected YumaNet fibers to proper operation, Unite may in its discretion elect to provide substitute equivalent fibers along the route that shall comply with the Fiber Specifications ("Replacement Fibers"). To the extent Unite elects to provide the City any Replacement Fibers in lieu of any YumaNet fibers, the City shall have an IRU in such Replacement Fibers, and such fibers shall be deemed included within and part of the YumaNet hereunder and shall be subject to the terms and conditions of the IRU Agreement applicable to the YumaNet and this Agreement. The City shall pay the Actual Cost for any Replacement Fibers as it would for any other repair solely related to the YumaNet.

(2) The City shall, at its sole cost and expense:

- a. Install and maintain any patch panels electronics, switches, servers, routers or other active components required on its side of the Demarcation Point, except as this Agreement or the License otherwise provides;
- b. Construct and install all necessary duct structures, from the MPOE or MDF to the Demarcation Point within any City facility to be connected to the YumaNet.
- c. Provide and maintain all wiring on the City's side of the Demarcation Point. All wiring on the City's side of the Demarcation Point, is and hereafter shall be the property and responsibility of the City, and the City shall be responsible for its maintenance, even if the wiring was initially installed by Unite.

(3) Third Party Limitations and Access.

- a. No party shall perform work on the YumaNet or any expansion of the YumaNet made pursuant to Section 3 where YumaNet fibers are installed with other System fibers except as may be authorized by Unite, or provided herein or in the IRU Agreement.
- b. The City shall allow access to its facilities to install and maintain the YumaNet during normal business hours and be able to respond to emergency calls from Unite within two hours.

(4) Unite has the right to relocate, replace or rebuild any portion of the YumaNet subject to this subsection. In the event that any portion of the YumaNet needs to be relocated, replaced, or rebuilt for any reason, Unite shall notify the City as soon as is practical. Unite shall further notify the City of the reason(s) for the relocation, replacement, or rebuilding and the impact said relocation, replacement or rebuilding is expected to have on the YumaNet.

- a. No construction that alters the fiber routes or pathways, fiber terminations or operation of the YumaNet may commence without Unite providing the City at least ninety (90) days prior written notice, except to the extent Unite was not given sufficient notice to provide ninety (90) days' written notice in which case notice will be given as soon as possible.
- b. No construction may be undertaken that adversely affects the City's IRU. To the extent the relocation, replacement, or rebuild requires Unite to substitute or provide additional fibers, the City shall have an IRU in such fibers.
- c. Changes to the YumaNet must be made in a manner that will not affect the physical or logical network topology or otherwise prevent the City from utilizing the fiber in the way it was utilized before the change, without the need for additional equipment or software. In no event may the number of fibers that the City is authorized to use pursuant to IRU Agreement be reduced,

provided that, nothing herein prevents Unite from abandoning a portion of its network, subject to the abandonment provisions of the IRU Agreement.

- d. The costs of any changes to or relocations of the YumaNet that are made in Unite's discretion or for any cause other than a required relocation shall be borne by Unite and shall not be borne by the City.
- e. The City shall be solely responsible for the cost of any relocation work, required at any given time, for the fibers provided solely for City use.

(5) In the event that any portion of the System, or the ducts, poles, trenches and Required Rights, as defined in Section 7.6 of the IRU Agreement, in or upon which the City Fibers have been installed is condemned pursuant to law or acquired by agreement, Unite shall use commercially reasonable efforts to relocate the City Fibers and the System, and if it is unable to relocate the City Fibers or the System, it may abandon them, subject to the abandonment provisions of the IRU.

3. YumaNet Sites

(a) General

- (i) In addition to the existing fiber dedicated to the City pursuant to the IRU, Unite shall install six (6) pairs of fiber (12 dark fiber strands) for the City's use as Unite builds out its system. Unite shall provide such fiber at no cost to the City, and as completed, the fibers will become part of the IRU.
- (ii) In addition, upon request from City and acceptance of the estimated costs by City, Unite shall construct from such existing fiber to YumaNet sites in accordance with this Section. Unite's design and construction of its network shall be conducted in a manner that allows for cost-effective construction of connections to the Yuma Net pursuant to Section 3(c).
- (iii) Testing shall be performed to ensure compliance with the fiber specifications as construction is completed.
- (iv) Any fiber strands installed by Unite shall remain the property of Unite, unless the parties agree otherwise, and any fiber strands as to which Unite retains ownership shall be subject to the IRU Agreement, and maintained in accordance with this Agreement, as further provided herein. City retains the right to construct fiber, or cause fiber to be constructed, from points it chooses to the City Fibers. Any such fiber will not be the property of Unite, and will not be subject to this Agreement or the IRU Agreement, except as the parties specifically agree.

(b) Design and Location

The Parties shall work cooperatively on the design of future YumaNet sites and seek to ensure a reasonable cost to the City in the design and construction of future YumaNet sites. The City and Unite shall meet regularly so that Unite may notify the City of any planned additions to System fiber associated with its System in Yuma/CC, and so the City may notify Unite of developments that may affect or require system expansion and plans for YumaNet expansion, so that the City may plan and request construction of additional YumaNet sites in conjunction with the work Unite is performing on its own System. City may request construction of YumaNet sites (a) where the beginning and end point of the expansion is within the Yuma/CC; (b) where the beginning and end point are City facilities within Yuma/CC; or (c) for a connection for a regional public safety facility that coordinates communication among public safety agencies operating in Yuma/CC provided in all cases that Unite has the right to install facilities in locations necessary to service such YumaNet sites.

(c) Construction

- (i) Upon the terms hereinafter stated, Unite shall construct expansions of the YumaNet, and thereafter Maintain the facilities installed in connection with the expansion. Once the expansion is paid for, the irrevocable rights to use the facilities associated with the expansion specified in the IRU Agreement shall be deemed to have been conveyed to the City, subject to the IRU Agreement.
- (ii) Construction shall meet the design, specifications and testing requirements included in Appendices C-E, attached hereto and incorporated by reference. Delivery of notices and materials required in this Section 3(c) shall be in accordance with Section 18, and material shall be deemed received as specified in Section 18.
- (iii) Within one hundred twenty (120) days of receipt of a written request for an additional YumaNet site, Unite shall provide the City with a preliminary design and construction schedule. Unite shall also submit estimated Actual Costs for the site in writing to the City.
- (iv) The City shall have sixty (60) days from receipt of design to accept the proposal or request changes. Unite shall promptly make the requested changes to the preliminary design and construction schedule as directed by the City and submit revisions and a revised cost estimate. The Actual Costs will be the maximum permitted charge by Unite to the City for an additional YumaNet site. The City shall have sixty (60) days from receipt of the revised design to accept the proposal or it shall be deemed rejected. Unite shall not begin construction prior to the City's written approval of the final design and written commitment to pay Unite its Actual Cost associated with the new site within sixty (60) days after acceptance as set forth in this Section.
- (v) Once the construction proposal is accepted by the City, Unite shall complete all construction (including extending fiber from the YumaNet to the Demarcation

Point of a new YumaNet site, which shall generally be the MPoE or the MDF) and testing (as detailed in Appendix C) and restoring any property affected by the work to its prior condition by the end date specified in the construction schedule. Provided that, the City may submit a change order for the construction, and if it does so, the time and price for completion will be changed to reflect the effect of the change order.

- (vi) City shall be notified in writing of the testing at least five (5) business days before it is scheduled to occur, and the test procedures and equipment that will be used. The City is entitled to observe the testing.
 - (vii) Once the additional new site has passed the testing requirements, Unite shall provide the City with copies of results of each test required by Appendix C. The City has thirty (30) days from receipt of said results to inspect the new site and accept or reject it. If not accepted or rejected within the thirty (30) days, the site will be considered accepted by the City. Once the site is accepted, the City may use the YumaNet at the site and Unite may begin billing the City for Maintenance thereof, subject to the warranty here and in Section 7.6 of the IRU Agreement.
 - (viii) The City may not unreasonably withhold acceptance of any new site that satisfies the requirements of this Agreement. The City may inspect and test the facilities before acceptance, and if it rejects the site, the City shall identify the problems with specificity and provide Unite with thirty (30) days to correct any problems.
 - (ix) The City shall pay Unite in accordance with Section 6.
- (d) **Attachments**
If the City desires to attach devices or connect fibers to the YumaNet fibers (the "Attachment") on Unite's side of the Demarcation Point, Unite agrees to perform the necessary splice work at logical splice points promptly, at its Actual Cost. The Actual Costs shall be billed in the same manner as for a YumaNet Site. City is responsible for obtaining necessary rights to place the Attachment near the logical splice points.

4. Maintenance Warranty

The YumaNet fibers, as maintained by Unite, are warranted to meet manufacturer's specifications.

5. [Reserved.]

6. Payment Procedures

- (a) Maintenance Fee

Unite shall submit to the City an invoice for YumaNet Maintenance within sixty (60) days after the work is completed and where warranted by the work a complete test package is provided to the City. The City shall pay the invoice within sixty (60) days of receipt of a complete invoice, subject to Section 6(d).

(b) **Actual Cost of New Construction**

Unite shall submit an invoice for sites constructed pursuant to Section 3, along with supporting documentation in accordance with Section 9(b). The invoice shall be for the Actual Cost of construction, not to exceed the maximum amount permitted under Section 3. The invoice shall be submitted no later than sixty (60) days after the date the site is accepted or deemed accepted. The City shall pay the invoice within sixty (60) days of receipt of a complete invoice, subject to Section 6(d).

(c) **Interest On Late Payments**

Unite may assess interest at a rate of prime plus 2% per annum on late payments.

(d) **Disputes, Escrow**

The City shall pay all undisputed amounts and place any disputed amount in escrow or obtain a bond for the disputed amount.

(e) **Time Limit On Challenges To Amount**

The City shall have two months to dispute the amount of any invoice or annual payment.

7. Permitted Connections/Communications

(a) **Work**

Subject to this Section and Section 12(c), only Unite or its designees may perform work on Unite's side of the Demarcation Point.

(b) **Additional Connections**

The City may make additional connections to the YumaNet, or upgrade the equipment used in connection with the same on the City side of the Demarcation Point, as it deems appropriate upon prior notice to Unite pursuant to Section 19(b); provided, however, that the same does not cause interference with other portions of the System.

(c) **Actions Prohibited**

Neither party shall take any action, or require the other party to take any action that causes it to be unable to satisfy the performance requirements of this Agreement.

8. Repair Response Time

(a) **In General**

Unite shall repair any problem on its side of the Demarcation Point as soon as reasonably possible, considering the scope and characteristic of the problem. It shall at least satisfy the standards set forth in this Agreement.

(b) **On-Call Technicians**

Unite shall maintain a network operations center with technicians “on call” twenty-four (24) hours a day seven (7) days per week. The technicians shall respond to all inquiries promptly, and where repair work will be required to solve the problem, provide City with an estimate of the time required to perform that work.

(c) **Maintenance**

Unite will notify the City in writing of any planned Maintenance which shall or could affect the operation of the YumaNet, which notice shall be provided at least three (3) business days before the planned Maintenance. In the event of an un-planned Maintenance event, the City will be contacted as soon as possible via written or telephonic means to persons designated to receive notice under Section 20(a).

(d) **Response Times**

Unite shall classify maintenance, repair, and support issues in the following levels of priority:

Priority Level	Issue Description
P1	Loss of service to YumaNet critical paths (as identified by User).
P2	Simultaneous loss or material reduction in network performance to a critical path Site or more than two non-critical Sites.
P3	Simultaneous loss or material reduction in network performance to less than three YumaNet Sites (other than critical path Sites).
P4	Reduction in network performance to any YumaNet Site that does not materially impact use of YumaNet.

Unite shall prioritize repair issues, commence troubleshooting and repairs, notify User of a repair plan, and update User as follows:

Priority	Time On Site	Updates
P1	Within 2 hours	Every 2 hours
P2	Within 2 hours	Every 4 hours
P3	Within 4 hours	Every 24 hours
P4	Within 24 hours, Monday through Friday	Every 48 hours

Unite shall begin work immediately and work continuously until any P1 – P3 problems are resolved once Unite becomes aware, or is notified of them. Unite shall work on any P4 problem during normal business hours.

(e) **Procedures & Reports**

Unite shall document, process, and log YumaNet system failures and required actions in a similar manner as Unite does for customer calls to its System, and provide a copy to the City upon request.

(f) **Reliability**

Unite shall provide at least the level of reliability, repair and maintenance schedules provided to any commercial customers served via its System in Yuma/CC. Without limiting its other obligations under this Section, Unite will give connections identified by the City as critical paths at least the same priority in Unite's repair program as high priority paths on its System in Yuma/CC.

9. Recordkeeping

(a) **Testing Data**

Unite shall provide YumaNet testing data to the City promptly upon completion of a test.

(b) **As-Built Drawings**

(i) Unite shall provide the City access to GIS files of the YumaNet upon request, including but not limited to fiber routes, splice locations, and building entrance locations. Unite shall provide this information in an electronic ArcGIS format or other mutually agreed format. Provided that, any information provided to the City that is confidential may be marked as such, and shall be subject to the same treatment as confidential materials produced pursuant to the License Agreement and Section 9(d).

(ii) The City shall cooperate in sharing any information within its possession and necessary for drawing preparation as described in subsection (i) above, except such information as may be subject to a claim of confidentiality.

(c) **Accounting**

Each Party shall keep full and detailed records in accordance with Generally Accepted Accounting Principles, affording the other Party's authorized personnel and independent auditors, if any, full access to books, records, correspondence, instructions, drawings, receipts, vouchers and other documents relating to this Agreement. Unite shall-obtain, or retain the right to access and to provide the City access to records relating to any work performed related to this Agreement, whether performed by it or by contractors or subcontractors acting on its behalf. The Parties shall preserve all such records relating to each bill for at least two (2) years after payment of such bill or, if later, until any billing dispute has been resolved.

d) **Confidential Information**

Subject to applicable law, any information provided to a Party under this Agreement which has been designated as confidential by the Party providing the information shall be kept confidential by the Party to whom the information is made available. If a Party is required or requested to disclose information that has been designated as confidential, it shall

promptly notify the other Party in writing, in a timely manner so that the other Party may seek to protect the information from disclosure. Nothing herein requires either Party to violate applicable laws or orders of a court or agency of competent jurisdiction.

10. Term, Termination & City Rights Upon Termination

(a) Term

Unless earlier terminated in accordance with the terms herein, the term of this Agreement shall commence on the Effective Date of this Agreement and shall continue for so long as the IRU Agreement remains in force for all parts of the Unite System except those abandoned by Unite. In the event City revokes the License, or it terminates in accordance with its terms, and Unite contests the revocation, or claims it is entitled to renewal of the License, City will grant such authorizations as are within its authority to grant as may be necessary to permit the work required herein to be performed pending final resolution of the disputes. This Agreement may also terminate on one hundred eighty days (180) days' notice to City if Unite (or a successor or assign thereof) no longer provides any services (other than the services required herein) via the Unite System.

(b) Cancellation.

This Agreement is subject to the cancellation provisions set forth in A.R.S. § 38-511.

11. Transfer and Assignment

(a) Binding on Successors and Assigns

This Agreement shall be binding on each Party and their successors and assigns.

(b) Transfer

If Unite sells, transfers, or assigns the License, or in the event of any change of control that would prevent the City from fully enforcing this Agreement against the entity that owns or is responsible for operating the System in Yuma/CC, then Unite shall require the buyer, transferee, assignee or person obtaining control to fully assume this Agreement and the obligations to the City hereunder without any change to this Agreement.

(c) City May Not Transfer

The City shall not sell, transfer or assign its rights or delegate its duties under this Agreement without the prior written consent of Unite. Any purported City sale, transfer or assignment of this Agreement without the consent of Unite shall be void and shall be grounds for Unite to terminate this Agreement.

12. Enforcement Procedures

(a) Remedies, Generally

For any breach of this Agreement, either Party may exercise any remedy available at law or equity, except as specifically provided herein.

(b) Damages

Neither party shall be liable to the other for any consequential damages or lost profits, or punitive damages arising out of, or in connection with such party's breach of this Agreement.

(c) Failure to Perform Work

(i) Without limiting the other remedies available to it, if Unite fails to respond in the times provided in this Agreement, or fails to properly perform the work Unite is required to perform for any reason, including force majeure, or if this Agreement is terminated by the City pursuant to Section 12(d), the City may perform the work that Unite was to perform on only the City Fibers. The rights and obligations under this paragraph will survive that termination. The City shall be responsible for the reasonable cost of repairing any physical damage to the System due to its negligence or malfeasance in performing the work hereunder.

(ii) Unite will provide a list of contractors in Yuma/CC, or nearest to Yuma/CC who are qualified to perform work on the System. Any of the identified contractors, or any other contractor that is approved by Unite, may be retained to perform work on the YumaNet, subject to Section 7. The City shall notify Unite in writing in advance of any work it intends to perform on Unite's side of the Demarcation Point pursuant to Section 12(c)(i), except in emergencies, when notice may be by telephone. Contractors shall coordinate work activities through the Unite Network Operations Center, or if the Center is not available, in such manner as Unite may provide in its escalation procedures. All work done on Unite's side of the Demarcation Point is subject to the supervision and coordination of Unite to prevent damage to its System, which supervision and coordination will be provided so as not to delay the performance of the work.

(d) Termination For Cause; Notice & Opportunity to Cure

(i) The non-breaching Party may terminate this Agreement if the breaching Party fails to cure any material noncompliance within thirty (30) days of receiving written notice thereof or within such longer time period as may be required to cure such non-compliance using diligent efforts to cure such non-compliance.

(ii) The duty to cure includes the obligation to take reasonable steps to prevent recurrence of the breach.

(iii) Upon receipt of notice, the Parties shall promptly meet to discuss the alleged breach and the means to resolve the dispute or to cure the breach.

(iv) The cure period does not delay the City's rights to perform work under Section 12(c) or the IRU Agreement.

(e) Faulty Construction

If Unite performs any construction work in a manner that fails to comply with this Agreement or applicable law, then the City may order the work stopped. The City may serve written notice to any person engaged in or responsible for the construction, with a notice provided within one working day upon Unite's principal representative designated in Section 19 herein. Work that is stopped may be resumed when Unite provides reasonable assurance that the work will comply with this Agreement and applicable law.

13. Regulations & Disclaimer

(a) **Compliance with Rules: Unite**

With respect to equipment and facilities on Unite's side of the Demarcation Point, Unite shall remain responsible for compliance with all Federal Communications Commission rules and regulations, all applicable safety codes, including but not limited to the National Electric Safety Code (NESC), Arizona and local laws and regulations, and other laws, regulations and ordinances. Unite shall remain responsible for ensuring that any and all equipment and facilities on its side of the Demarcation Point are constructed and maintained in accordance with sound engineering practices.

(b) **Compliance with Rules: City**

With respect to equipment and facilities on the City's side of the Demarcation Point, City shall remain responsible for compliance with all Federal Communications Commission rules and regulations, all applicable safety codes, including but not limited to the National Electric Safety Code (NESC), Arizona and local laws and regulations, and other laws, regulations and ordinances. City shall remain responsible for ensuring that any and all equipment and facilities on its side of the Demarcation Point are constructed and maintained in accordance with sound engineering practices.

(c) **Responsibility for Communications**

The City shall be responsible for ensuring that all communications carried on the YumaNet comply with this Agreement, applicable laws and regulations; and that any network operated over the YumaNet conforms with this Agreement, applicable statutes, ordinances, and regulations.

14. Indemnification & Hold Harmless

Claims, lawsuits, actions, liability, losses, damages, and any others expenses and costs, including by not limited to reasonable attorneys' fee and courts costs relating to, arising out of, or alleged to have resulted from Unite's performance or failure to perform under the terms of this Agreement, shall be subject to indemnity provided in the License Agreement, as if fully set forth herein, and shall survive termination of the License Agreement.

15. Insurance, Bonds & Other Securities

The insurance, bonds and letters of credit required by the License shall include the YumaNet within their coverage. Any performance bond or letter of credit provided for the

City's benefit pursuant to the License or other applicable law may be drawn upon by the City to ensure the faithful performance of this Agreement.

If Unite no longer has a License, but continues to operate a System within the City, it shall obtain insurance, bonds and letters of credit at least equivalent to those required by the License last in effect.

16. Amendment.

The Parties may only amend this Agreement in writing and signed by both Parties.

17. Governing Laws

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

18. Venue

Any litigation between the parties arising under or regarding this Agreement shall occur, if in the state courts, in Superior Court for the County of Yuma, Arizona, and, if in the federal courts, in the United States District Court for the District of Arizona.

19. Notice

a) Operational Notices

Notices regarding the operation or maintenance of the YumaNet (including notices of outages or degradation of service) shall be provided by telephone as provided below; and by email to the email addresses noted below if a person is not reached at the number specified below.

Information Technology Services: Assistant Director-Technical Services
& Operations
928-373-4914
itshelpdesk@yumaaz.gov

Administration-Strategic Initiative: Director and/or Network Engineer
928-373-5011
StrategicinitiativesSupport@yumaaz.gov

Unite Fiber Support
866-963-4237
NOC@upnfiber.com

b) Other Notices

All other notices, elections and documents (collectively, "notices") to be given or delivered by or to any Party hereunder shall be in writing and (as elected by the Party giving such notice) hand-delivered with confirmation of delivery; or sent by overnight delivery service with confirmation of delivery or by United States certified mail with return receipt

requested, unless otherwise specified herein.

c) Effective Date of Notice

The effective date of any notice shall be the date of delivery if by personal delivery or overnight delivery service; if mailed, upon the date delivery is confirmed, delivery is refused, or the notice designated by postal authorities as non-deliverable.

d) Designation for Other Notices

The Parties hereby designate the following addressees to which notices under 19(b) may be delivered, and delivery to such addresses shall constitute binding notice given to such Party:

City of Yuma:
City Administrator
One City Plaza
Yuma, AZ 85364-1436

With a copy to:

City Attorney
One City Plaza
Yuma, AZ 85364-1436

Unite:

Unite Private Networks, LLC
Attn: Legal Department
7200 NW 86th Street, Ste. M
Kansas City, MO 64153

e) Change of Notice

Any Party may from time to time change the address, telephone number or email to which notice shall be given upon three (3) days prior written notice to the other Party.

20. Provisions Required by Law.

a) Conflict of Interests.

This Agreement may be cancelled in accordance with A.R.S. §38-511.

b) E-verify Requirements.

To the extent applicable under A.R.S. § 41-4401, Unite and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). Unite's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

c) Boycott of Israel.

To the extent applicable under A.R.S. § 35-393.01, Unite certifies Unite is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.

d) Non-Discrimination.

Unite shall comply with the Americans with Disabilities Act (ADA) and shall indemnify City for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. Unite shall not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Agreement, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and State Executive Order No. 2009-09. Unite shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Agreement.

e) Other Statutory Provisions.

Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction

21. Excused Performance

a) Force Majeure

If Unite or the City is delayed or interrupted in the performance or completion of any promises made in this Agreement by an embargo, war, fire, flood, earthquake, epidemic or other calamity; by act of God or of the public enemy; by any strike or labor dispute; by the inability to secure governmental licenses, permits or priorities; by the unavailability of sources of supply to Unite, or any other outside cause beyond the control of Unite, or the City, and without its fault or negligence, then such delay or interruption shall not be treated as a breach of this Agreement. A delay or interruption caused by an affiliate of Unite is not an event of force majeure. Provided that the City may itself perform Maintenance on the YumaNet on Unite's side of the Demarcation Point pursuant to Section 12(c)(i) during any *force majeure* period.

b) Other

If Unite or the City is delayed or interrupted in the performance or completion of any promises made in this Agreement by the neglect or default of the other, then the affected Party shall be excused from any delay or failure to perform under this Agreement caused by such neglect or default.

22. Security Practices

In performing work under this Agreement, Unite shall comply, to the extent applicable, with State and Federally mandated security practices for those portions of the YumaNet carrying criminal justice and HIPAA data

23. Drafting Considerations

This Agreement has been drafted, negotiated and reviewed by the Parties, each of whom is sophisticated in the matters to which this Agreement pertains, and no one Party shall be considered the drafter thereof.

24. Severability

If any terms, parts or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts or provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

25. Entirety of Agreement

This Agreement, including the Appendices attached hereto, constitutes the entire Agreement of the Parties with respect to the matters set forth herein and supersedes any prior oral or written agreements and discussions between the Parties with respect thereto.

26. Effective Date

This Agreement shall be effective as of the date it is signed, so long as City, within sixty (60) days of signature, extends the License by five (5) years. Unite hereby consents to the extension of the License for five (5) years from the current scheduled termination date of September 17, 2023.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the ____ day of _____, 2019 ("Effective Date").

City of Yuma, Arizona

Unite Private Networks, LLC

John D. Simonton
City Administrator

Name_____

Title:_____

ATTEST:

By:_____

Lynda L. Bushong, City Clerk

APPROVED AS TO FORM:

Richard W. Files, City Attorney

APPENDIX A: YUMANET CONNECTIONS DESIGN

Unless the City directs otherwise, where the connection is constructed by Unite, the additional connections shall be constructed consistent with the following design:

1. Each connection will consist of twelve (12) dedicated, single mode optical fibers (6 pair)(upstream/downstream), being terminated as specified in Appendix B.
2. Each connection will be designed in a Home Run or loop/right configuration, depending on the criticality of the site and the need for redundancy from at YumaNet Hub specified by the City, to the identified site as designated by the City.
3. The City may require route-diversified connections to any city designated site and will bear all extra costs associated with such enhanced route.
4. It is the goal of the City, through use of the City Fibers installed as part of the build-out of the Unite System, pursuant to Section 3(c) or built by the City, to develop a looped fiber network as shown in Exhibit 1 to Appendix B, although the City reserves the right to alter this design and to add to, or subtract from, the connections shown.

APPENDIX B: YUMANET FIBER SPECIFICATIONS

1. Single-mode fiber will be utilized for all portions of the YumaNet, unless City designates otherwise.
2. ANSI/TIA/EIA standards for fiber optical cable will be used in testing the network. For single-mode fiber the parties will use ANSI/TIA/EIA 568A Optical Cable Standard for Singlemode Fiber or the successor standard:
 - a. Maximum attenuation for Outside Plant Cable: 0.5db/km @1310nm
 - b. Maximum loss per connector: 0.75db
 - c. Maximum loss for cross-connected fiber (2 connectors end-to-end in bulkhead coupler): 1.5db
 - d. When no lower limit is specified in the applicable construction contract, the splice loss of each field splice shall not exceed 0.3 dB at 1310nm
3. The YumaNet will be designed and Maintained (unless the City permits additional connectors) so that:
 - a. The maximum number of connectors on any point to point connection: 4
 - b. The maximum connection loss on any point to point connection: 3db
 - c. The maximum total loss on any point to point connection: 20db
 - d. Paired fibers shall have consistent loss levels within 3db of one another.
 - e. Future point to point connections will satisfy these Appendix B standards.
4. Maximum loss of each YumaNet optical connector will meet or exceed the connector manufacturer's specifications.
5. All YumaNet optical fiber connections will be terminated with "SC-UPC" connector configuration; YumaNet fibers will be marked so that they may be clearly identified; City will be provided up-to-date information identifying how the YumaNet fibers are marked and where they are located.

Exhibit 1 to Appendix B

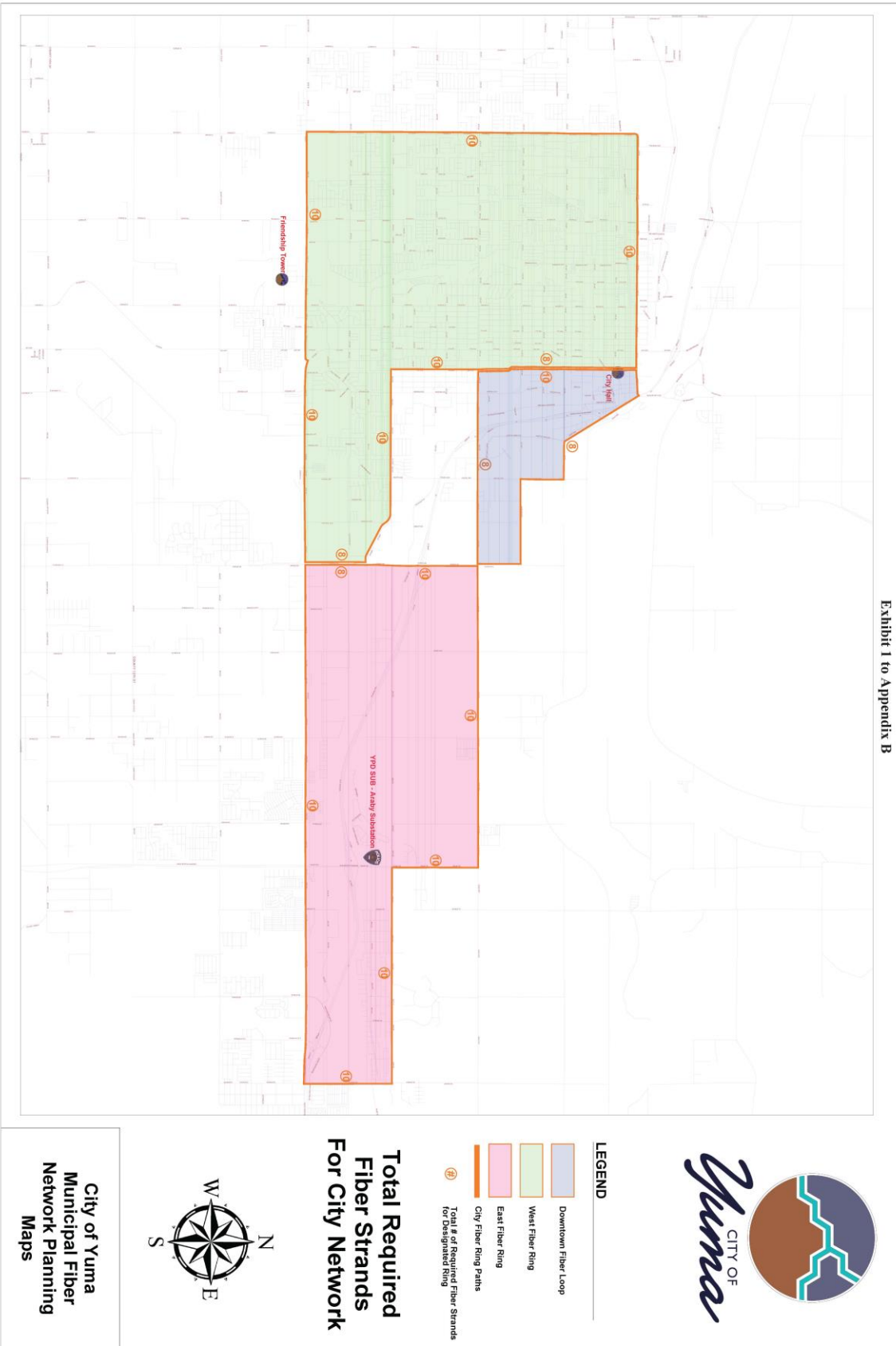


Exhibit 1 to Appendix B

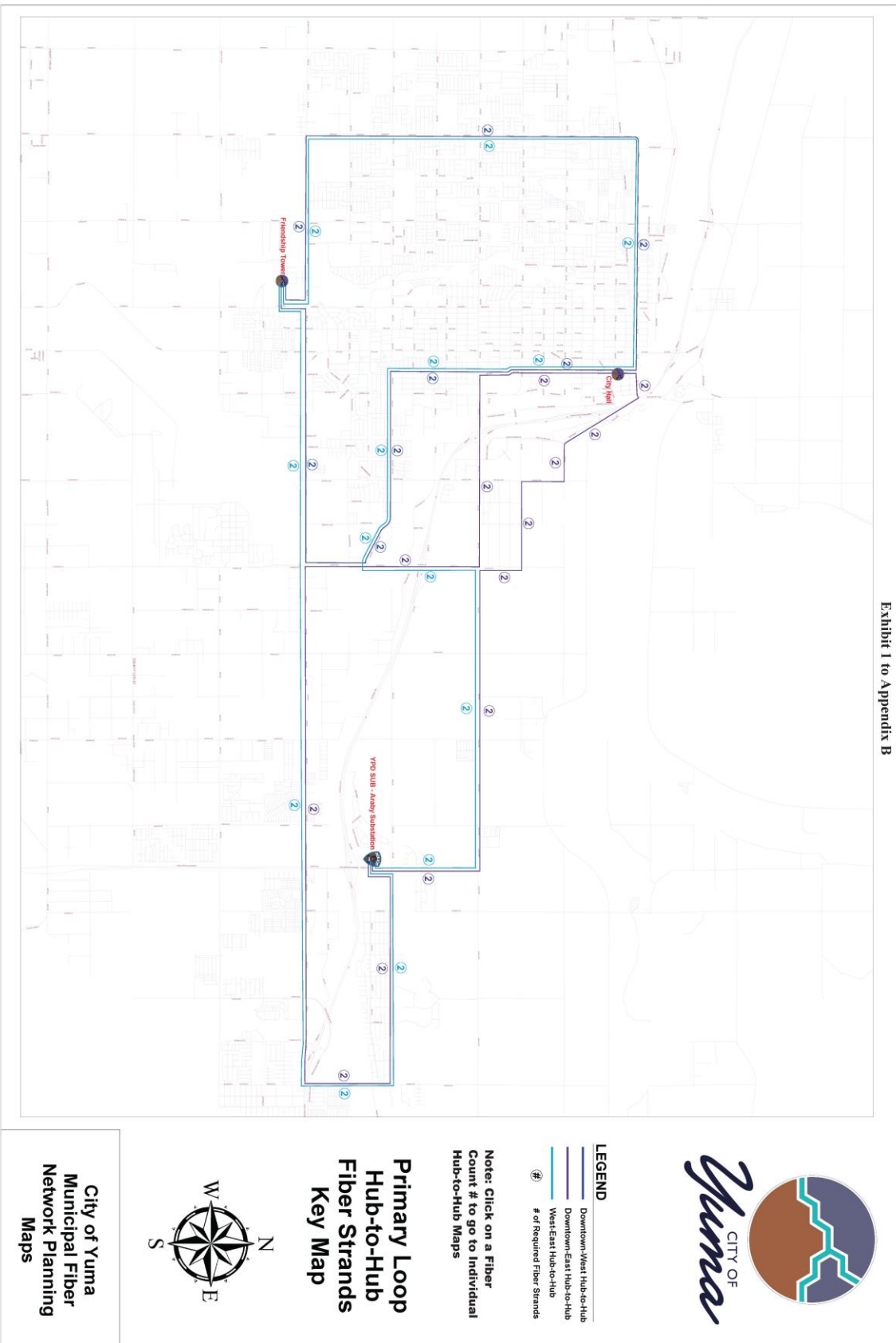


Exhibit 1 to Appendix B

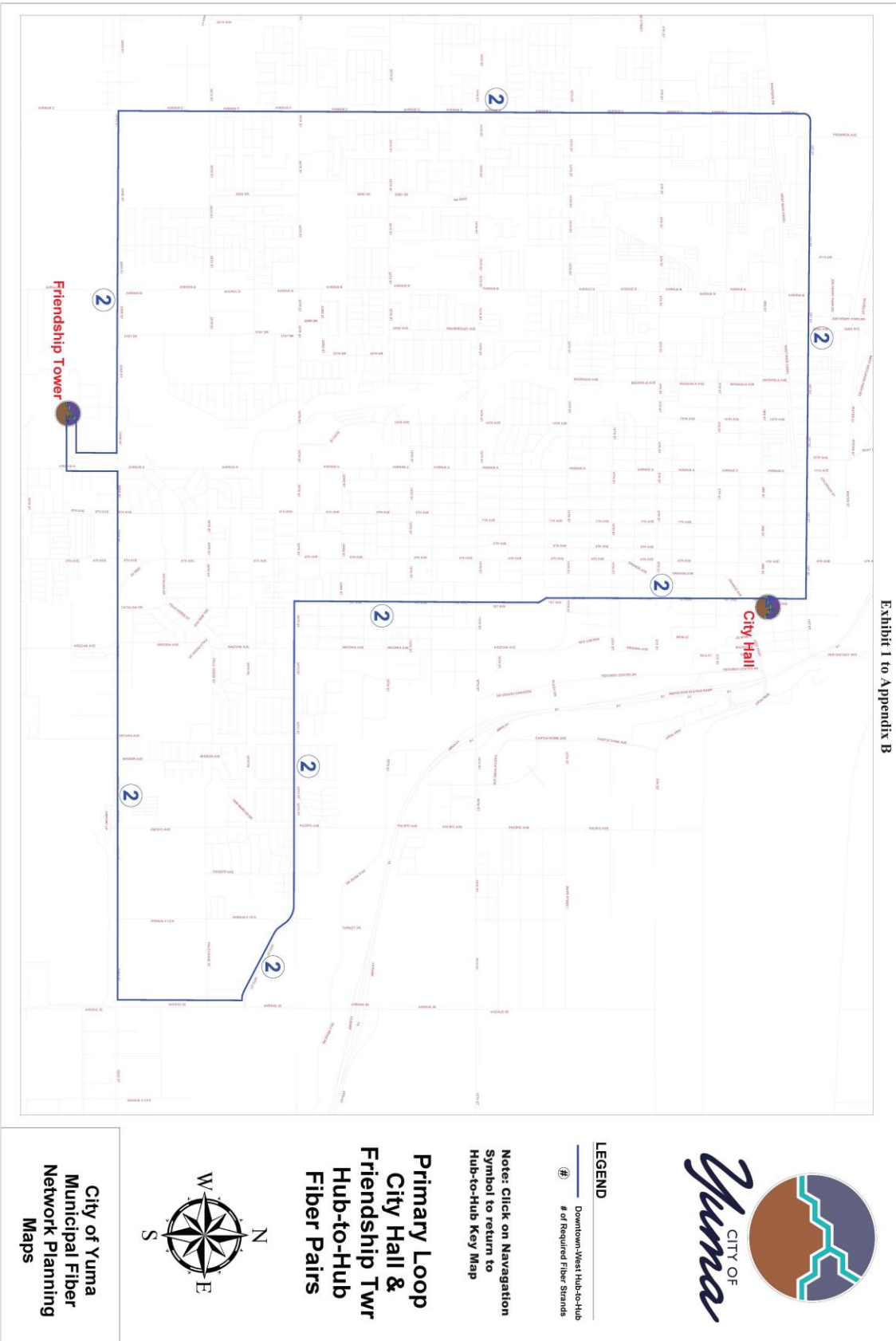


Exhibit 1 to Appendix B

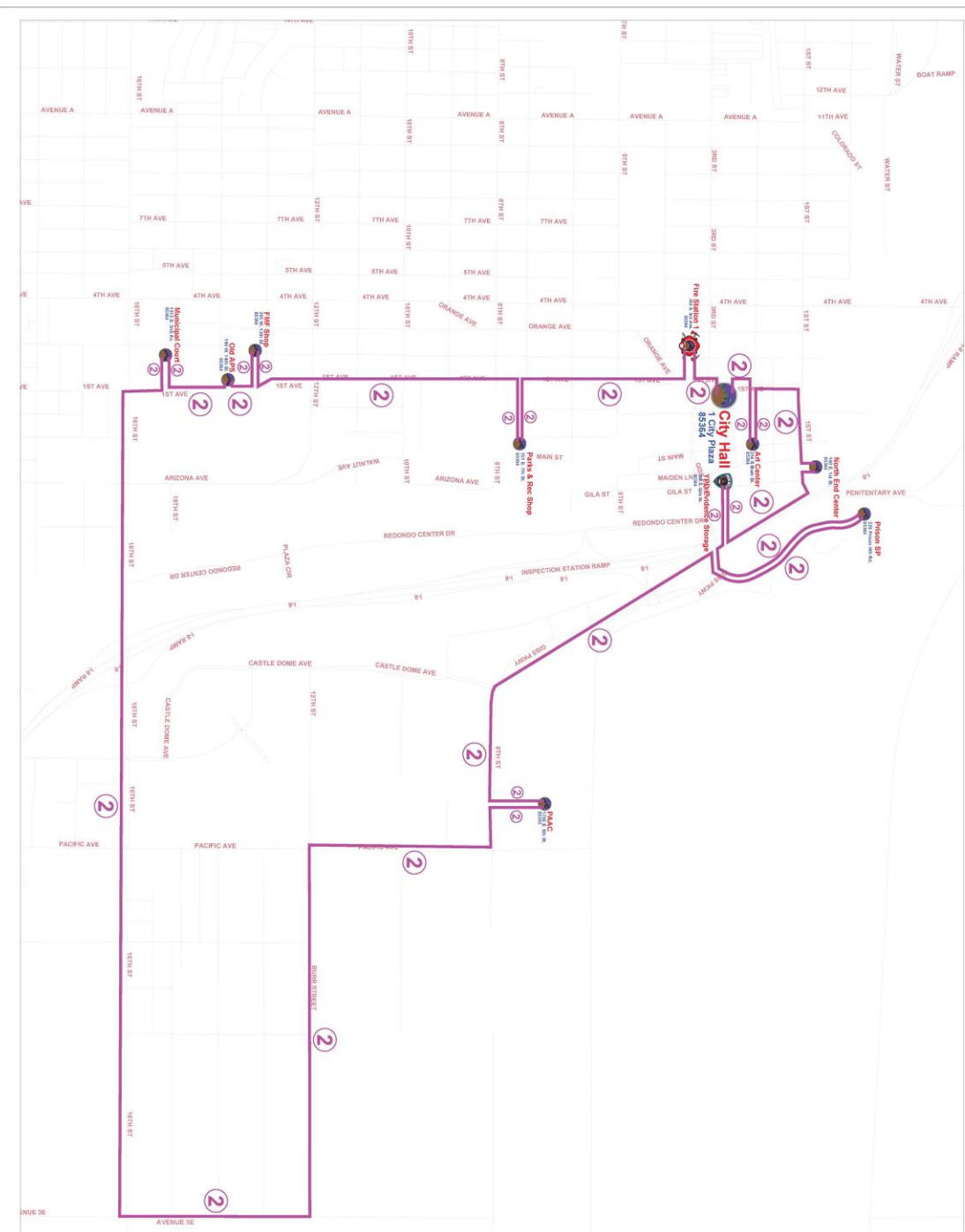


Exhibit 1 to Appendix B





Exhibit 1 to Appendix B



LEGEND

- Downtown Medium Site Fiber Loop
- # of Required Fiber Strands
- CSF Hub Downtown Fiber Ring Hub

Medium Site Downtown Fiber Loop



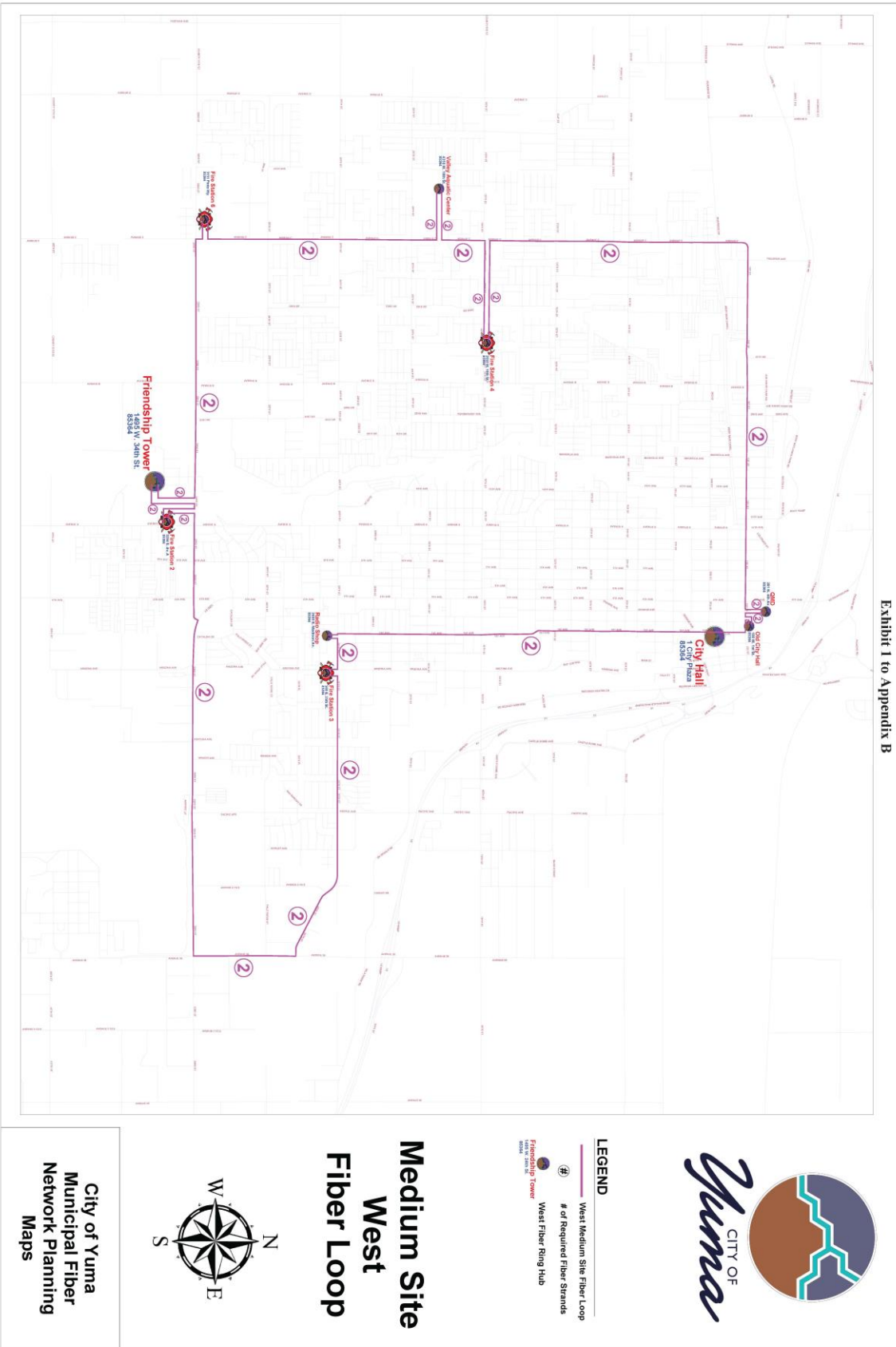
City of Yuma
Municipal Fiber
Network Planning
Maps

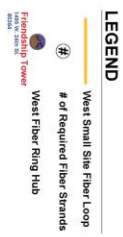
The map displays the route for the 2017-2018 City of Redondo Beach Police Department. The route is marked with a yellow line and numbered 2. Key locations include City Hall, Redondo Beach Police Department, and various streets like Avenue A, 1st Avenue, and Pacific Avenue.



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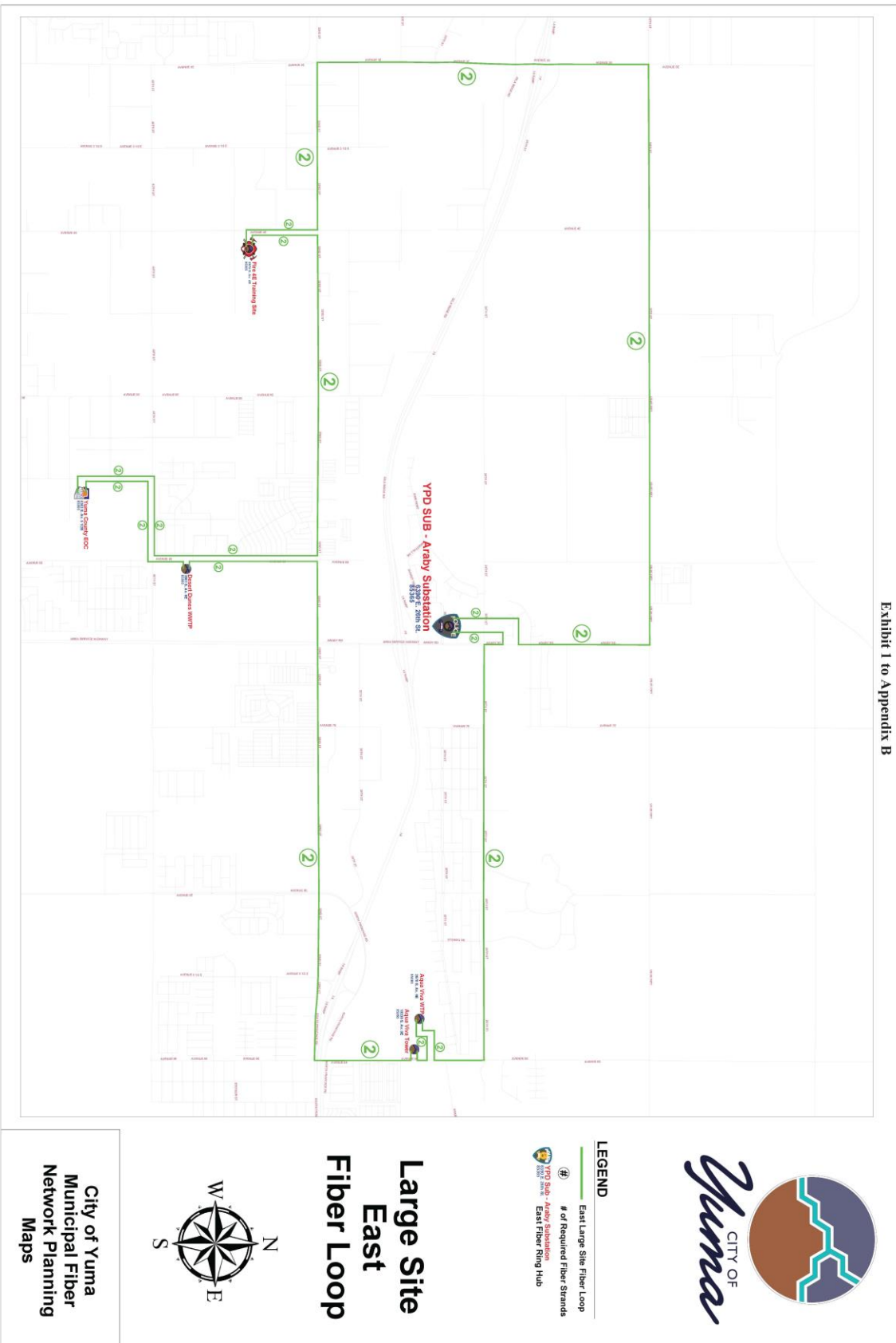
Exhibit 1 to Appendix B





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Exhibit 1 to Appendix B



APPENDIX C: ACCEPTANCE AND TESTING

- A. The acceptance testing to determine completion of construction will be composed of the following parts:
 - 1. Physical inspection
 - 2. End-to-end testing
- B. Each of these inspections will lead to the initial testing of the network, developing the as built documentation and form a reference for future troubleshooting.
- C. The physical configuration of a YumaNet addition will be inspected to ensure compliance with the YumaNet design and applicable law and the License. Inspections of the fiber runs and components will be made during the construction process to maintain the integrity of the design, and Unite shall keep records thereof. Should a change be required, Unite shall create a Change Notice that outlines the reason for the change. The change(s) will not be implemented until the change notice is signed by the City.
- D. Upon completion of an additional YumaNet site, Unite shall within 5 business days conduct a technical performance test in accordance with a test procedure consistent with sound engineering practices, which the City may observe, to demonstrate
 - (i) continuity on the optical route, from the point of origin to termination
 - (ii) compliance with splice and termination losses, and
 - (iii) consistency with the testing procedures described herein.
- E. Unite shall conduct bi-directional testing consistent with best engineering practices for each additional YumaNet site fiber and provide test results to the City.