

TELECOMMUNICATIONS LICENSE AGREEMENT

This License (this "License" or this "Agreement"), is issued by the City of Mesa (hereinafter called "Licensor" or "City"), an Arizona municipal corporation, to Electric Lightwave, LLC, a Delaware limited liability company (hereinafter called "Licensee"). Licensor/City and Licensee are collectively referred to herein as the "Parties" and individually as a "Party."

WHEREAS, Licensee has applied to the City for a License for the construction, installation, placement, operation and maintenance of an underground optical fiber based, communications network (hereinafter called "Telecommunications System") in, on, under, along, and across certain public streets, public rights-of-way, and public easements (collectively the "Public Streets") within the City in order to provide telecommunications services.

WHEREAS, by such authority as may be conferred by Section 9-581 through 9-583 of the Arizona Revised Statutes and amendments thereto, the Mesa City Charter, Mesa City Code, federal law, and other applicable law (the "Applicable Laws") the City is issuing this License; and

WHEREAS, if Licensee intends to utilize its facilities to provide local exchange and intralata/interlata, or lit services, Licensee shall be required to obtain a CC&N from the Arizona Corporation Commission ("ACC") and provide evidence thereof to the City; and

WHEREAS, City and Licensee have had discussions to resolve the issue of the per foot fees payable under A.R.S. §§9-582 and 9-583, as to which they have had different approaches, and as a mutually agreeable resolution of this issue, City and ELI agree that ELI shall provide in-kind compensation to the City, in lieu of paying such fees, as set forth below; and

WHEREAS, pursuant to Resolution No. _____ the City Council has authorized the City Manager or his designee to execute a license with Licensee to construct, install, operate, and maintain a Telecommunications System (as defined below) in, on, under, upon, along and across certain Public Streets within the City to provide telecommunications services.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants herein contained, the Licensor hereby grants to the Licensee the License as follows:

SECTION 1. License Granted.

1.1 Subject to the provisions of this Agreement, the Mesa City Code, the Mesa City Charter, and Arizona and federal law, Licensee is granted a revocable and nonexclusive license to construct, repair, maintain, replace, operate, lease, install, remove, and upgrade, in, under, upon, along and across the public rights-of-way and easements in the City limited to an up to six (6) inch diameter construction pathway, the location of which is specifically identified in the map attached as Exhibit A, a fiber optics communications network, facilities, conduit, innerduct, fiber optic cables, carrier pipe, manholes and hand holes, vaults and appurtenances necessary for use and operation of the system (not including a cable system or cable operator as those terms are defined in the Communications Act of 1934, state law or the Mesa City Code under any

circumstances and not including local exchange telephone service or competitive access provider service except as provided by a person or entity that has all grants, permits, licenses and other authorizations required by the City and other applicable law to provide local exchange telephone service or competitive access provider service) (collectively the "Communications Network"), subject to the applicable provisions of this license, the City Charter, City Code, and any future amendments to the City Charter or City Code, together with all applicable laws and reasonable regulations of any regulatory agency having competent jurisdiction (the "License"). The terms, phrases, words and their derivatives shall have the meaning defined in Title 9, Chapter 14, Sections 1-3 of the Mesa City Code as amended from time to time.

1.1.1 For the purposes of this License, Telecommunications System does not include a "Multichannel Video System" as defined below.

1.1.2 Multichannel Video System includes:

- (a) A "cable system," as such term is defined in Title VI of the Federal Communications Act of 1934, providing service within the City;
- (b) An "open video system," as such term is defined in Title VI of the Federal Communications Act of 1934 and implementing regulations, providing service within the City;
- (c) Any other system providing Multichannel Video Service within the City, where such service is transmitted in whole or in part via wires or lines that are in or cross any public highways, public streets or public utility easements within the City. The preceding sentence shall apply whether the provider owns, leases or otherwise obtains the right to use such wires or lines, including wires or lines of a telecommunications provider used pursuant to tariff or otherwise for such purpose;
- (d) Any other system providing Multichannel Video Service within the City where a license or similar permission or approval from City is required under applicable law; and
- (e) For purposes of this License, "Multichannel Video Service" means multiple channels of video programming where some or all of the video programming is generally considered comparable to programming provided by a television broadcast station or by a direct to home satellite service. Multichannel Video Service specifically includes, but is not limited to, "cable service" as such term in Title VI of the Federal Communications Act of 1934.

1.2 If it is necessary for the Licensee to comply with any law or regulation of the Federal Communications Commission ("FCC") or the ACC to engage in business activities associated with use of the public highways and public rights-of-way to provide Telecommunications Services or Intrastate/Interstate Telecommunications Services as appropriate, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License. Provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this License without a written modification to this License.

1.3 This License does not allow one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmissions, any one or more of which that may be subject to a cable television license. For purposes of this License, "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services or cable services as defined by Arizona Revised Statutes § 9-581.

SECTION 2. Conditions, Indemnity, Compensation, and Taxes.

2.1 The Licensee has represented to the Licensor that the Telecommunications System authorized herein may be used or licensed for interstate and intrastate telecommunications services. The Telecommunications System constructed, installed, operated, leased and repaired, replaced and/or maintained pursuant to this License shall be constructed, installed, operated, leased and repaired, replaced and/or maintained in accordance with applicable governmental established practices including, without limitation, the City, the State of Arizona and any other governmental entity with jurisdiction with respect to public rights-of-way and easements. The public rights-of-way and easements under the control of the City shall be used according to plans approved by the City Engineer. Prior to the installation, construction, erection, enlargement, replacement, extension or relocation of any portion of the Telecommunications System authorized herein, the Licensee shall apply for and obtain from the City a Right of Way Permit and a Right-of-Way Encroachment Permit pursuant to Title 9 of the Mesa City Code for such work on the Telecommunications System and submit an application per the City published application process. The City shall issue such permits to the Licensee on such conditions as are reasonable and necessary to insure compliance with the terms and conditions of this License. All work on the Telecommunications System, will be performed substantially in compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the City supplements to MAG and the City Engineering Standards and will follow good practices for the industry.

2.2 The Telecommunications System to be constructed, installed, operated, leased and repaired, replaced and/or maintained, upgraded and removed under this License, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within public rights-of-way and easements. Those phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of the

Telecommunications System shall be subject to the reasonable regulation by the City Engineer and the permitting process of the City.

2.2.1 No component or part of the Telecommunications System shall be installed, constructed, located on, or attached to any property within the Public Streets until Licensee has applied for and received approval for Right-of-Way Permits and/or Right-of-Way Encroachment Permits pursuant to Title 9 of the Mesa City Code for such work on the Telecommunications System. Additionally, Licensee shall comply with all other provisions of the Mesa City Code, including but not limited to Title 11 regarding zoning, Title 9, Chapter 8 regarding off-site construction and any other applicable City regulations. No attachment to existing infrastructure is allowed if attachment will require aerial overlanding or attachments except at the sole discretion of the City Engineer. Licensee and any contractors or subcontractors hired by Licensee shall have all required Arizona contractor's licenses for all work to be performed pursuant to this Agreement and on the Telecommunications System. Licensee shall be responsible for requiring that contractors or subcontractors hired by it have the required insurance and bonding as required by the State of Arizona and the City. Licensee shall submit Right-of-Way Permit and/or Right-of-Way Encroachment Permit Application(s) together with the details, plans and specifications for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this License Agreement including the installation, operation, maintenance, location and attachment of any and all of the Telecommunications System. At the time of submission, Licensee shall provide a duplicate copy of such permit application(s) to the City's Engineering Department, Attention: Right-of-Way Manager. The proposed and existing locations of Licensee's Telecommunications System, including related facilities or equipment, is generally depicted on Exhibit A and shall be depicted more specifically on engineering drawings provided to the City with the submittal of the plans and specifications during the permitting process. City will approve, deny or conditionally approve such applications based on the availability of space at the location sought by the Licensee, safety and other considerations in accordance with the City Code, applicable Rights-of-Way construction regulations, and other applicable law. If Licensee desires to change the location of any of the Telecommunications System, including any related facilities or equipment, from that set forth in the initial Right-of-Way Permit or Right-of-Way Encroachment Application(s), Licensee shall apply for and obtain approval for an amendment to the applicable permit prior to installation or construction. Such permits referred to in this Section 2.2.1 shall be identified by City log number and made a part hereof and referenced as a summary of its Telecommunications System location as Exhibit A and updated yearly.

2.2.2 Although the exact placement and location of Licensee's Telecommunications System in the Public Streets shall be determined by City through the permit process, Licensee has expressed its intent and City has expressed its desire to have the Telecommunications System installed outside of the paved street areas whenever such location is feasible and reasonable. Further, it is the intent and desire of both Parties that when it is necessary for the Telecommunications System to intersect City streets or be

placed under paved areas, Licensee shall use directional boring under such streets when feasible and reasonable.

2.3 If Licensee damages or disturbs the surface or subsurface of any public right-of-way, easement or adjoining public property or any public improvements or facility and such damage is not the result of inaccurate location marking by the City, Licensee shall promptly, at its own expense, and in a manner reasonably acceptable to the City, repair the damage or disturbance. If the Licensee fails to complete such repair within a reasonable time or in a manner reasonably acceptable to the City, then City may perform such repair and Licensee shall pay all the reasonable and fully documented direct costs expended in such repair of such City facility. It is hereby acknowledged that City policy requires that severed City owned fiber must be completely replaced to nearest previously existing splice point.

2.4 City shall have the right, because of a public emergency, to sever, disrupt, dig-up or otherwise destroy facilities of Licensee without any prior notice to Licensee, if the action is deemed reasonably necessary by the City Manager, City Engineer, Fire Chief, Police Chief, City Street Transportation Director, Development Services Director or Water Services Director. A public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the City or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc. In the event of a public emergency, City shall have the right to sever, disrupt, or dig-up facilities of Licensee, after all reasonable efforts have been made, given the constraints of such public emergency, (i) to contact Licensee prior to any such action; and (ii) to reasonably avoid severing, disrupting or digging up the facilities of Licensee. City shall, where reasonable, work with Licensee in responding to the emergency.

2.5 City shall not bear any cost of relocation of Licensee's Telecommunications System in the Public Streets for whatever reason. If Licensee is required to relocate its Telecommunications System facilities due to the construction of a public improvement, the City shall provide Licensee with as much advance written notice as reasonably possible before any required action of Licensee to relocate affected portions of the Telecommunications System and shall cooperate with Licensee to identify a replacement and alternative public right-of-way for the relocation of affected portions of the Telecommunications System. Promptly after service of notice by the City, City and Licensee shall cooperate to agree upon a removal schedule and alternative public right-of-way for re-location of the affected portions of the Telecommunications System. Licensee shall promptly remove, as reasonably as possible, the designated portions of the Telecommunications System in the Public Streets, and if requested by City, Licensee, at its sole cost and expense, will restore the sidewalks and other rights-of-way damaged by Licensee's removal and relocation of the Telecommunications System to a condition substantially comparable to the condition before removal and relocation of the Telecommunications System. The City will make every reasonable effort to design and construct projects pursuant to this section so as to minimize relocation expenses to Licensee. The City will not exercise its right to require the Licensee's Telecommunications System to be relocated in an unreasonable or arbitrary manner.

2.5.1 Licensee shall reimburse City for actual, direct damages incurred by the City as a result of delays in locations or relocations, as required by this paragraph, if caused by Licensee's negligence. It is agreed that the Licensee will be responsible for primary loss investigation, defense, and judgment, when this paragraph is applicable.

2.6 Subject to obtaining the permission of the affected property owner, when Licensee places its Telecommunications System on real or personal property located in the Public Streets that is owned by third parties such as an electric utility company or other private property owners, the Telecommunications System installed or constructed by Licensee shall meet conditions set by applicable Rights-of-Way Construction regulations and standards established or required by the City including, without limitation, all requirements of the Mesa City Code as amended from time to time. Upon request, but subject to authorization of the affected party property owner, Licensee shall promptly furnish to City documentation of such permission from such other affected property owner. By executing this Agreement, City does not waive any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the City for such uses of their property or facilities, or that revenues received by any public utility or other property owner from Licensee, by virtue of Licensee's use of their property or facilities be included in the computation of the use agreement fees owed by such parties to City. Nothing contained in this paragraph or in this Agreement shall authorize Licensee to enter into an agreement with any third party that results in aerial overlash of existing plant whether owned or leased from a third party, including, but not limited to aerial facilities and storage. Attachment to the Telecommunications System is authorized only when it can be accomplished through existing underground infrastructure and requires no aerial overlash of existing infrastructure.

2.7 In addition to the indemnity requirements currently set forth in the Mesa City Code at Section 9-14-3(D)(4), the Licensee shall indemnify and hold harmless the City, its Mayor and Councilmembers, officers, agents, employees, boards, and commissions ("Indemnitees") from and against all claims, damages, losses and expenses of any nature, including reasonable attorneys' fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of or resulting from the acts or omissions of the Licensee, its officers, agents, employees, contractors, successors or assigns or the performance of work by the Licensee and its agents, employees and contractors pursuant to this License or the installation, operation or maintenance of the Telecommunications System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this License, except to the extent contributed to by the negligence or willful misconduct of the Indemnitees. The amount and type of insurance coverage requirements set forth in this License will not be construed as limiting the scope of the indemnity stated in this section. In the event of any claim, demand or litigation specified in this section, the Indemnitee(s) shall give reasonable, prompt notice to the Licensee of such claim, demand or litigation. Failure of the Indemnitee(s) to timely give such notice to the Licensee shall relieve the Licensee of its indemnity obligations hereunder to the extent it is prejudiced or damaged by such failure. The Licensee shall have reasonable control of the defense of any action or litigation on such a claim or demand and all negotiations for the settlement or compromise of the same, except that the Licensee may not make any non-monetary settlement or compromise without the Indemnitee(s)'s consent, which consent shall not be unreasonably withheld. The Indemnitee(s)

shall cooperate with the Licensee in the defense and/or settlement of any claim, demand or litigation at the Licensee's expense. Nothing herein shall be deemed to prevent the Indemnatee(s) from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnatee(s)'s own counsel at the Indemnatee(s)'s own expense. No Indemnatee shall take any action to settle, to compromise or otherwise to make any payment, admission, or statement to or for the benefit of any third party claimant without the Licensee's written consent.

2.8 The provisions of Section 2.7 shall not be dependent or conditioned upon the validity of this Agreement and shall be and remain a binding right and obligation of the City and Licensee even if part or all of this Agreement is declared null and void in a legal or administrative proceeding. It is the intent of Licensee and the City upon the effective date of this Agreement that the provisions of Section 2.7 shall be a binding obligation of and inure to the benefit of Licensee and City and their respective successors and assigns, if any, even if part or all of this Agreement is declared null and void in a legal or administrative proceeding.

2.9 The Licensee and Licensor agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the City did not have the authority to issue a License to Licensee under Arizona law, then this License shall be considered a revocable license with a mutual right in either Party to terminate without cause upon giving sixty (60) days notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council under Title 9 of the Mesa City Code to issue a revocable permit and the power to revoke as provided herein.

2.10 There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any ordinance, the Mesa City Code or the Mesa Charter, and the Licensee, by its acceptance of this License, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or powers, heretofore or hereafter enacted or established, except those actions or requirements which have been found to be unlawful under state or federal law. Neither the granting of any License nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

2.11 Licensee shall pay the lawful charges, fees, and taxes required by the Mesa City Code, including without limitation, all required application and permit fees, and the applicable fees under Schedule of Fees and Charges (as amended) including traffic barricade fees as per the Transportation Department's Schedule of Fees and Charges. Attached hereto as Exhibit A is a map illustrating the location of Licensee's Telecommunications System. Exhibit B is a map illustrating the location of Licensee's Telecommunications System and leased facilities in Public Streets and easements.

2.12 Upon approval of the City Manager or his/her designee, and subject to Licensee's payment of the additional annual per foot fee, if such fee is owed under A.R.S. 9-581 through 9-

583, based upon such expansion, and Licensee's compliance with all other obligations under this License, the Licensee may extend its Telecommunications System within Public Streets. Upon such expansion, and annually thereafter, Licensee shall provide an updated Exhibit B to the City.

2.13 Prior to any extension of the Telecommunication System pursuant to the Location Policy, the Licensee shall apply for and obtain from the City a permit and submit a permit application per the City's permit application process.

2.14 If the FCC, Federal or State Government, or the courts, in the future, permit the City to receive compensation for the use of the public rights-of-way to provide telecommunications services, the City and the Licensee shall negotiate in good faith a mutually agreeable amendment to this License to include this compensation.

2.15 Any privilege claimed under this License by the Licensee in Public Streets shall be subordinate to any prior or subsequent occupancy or use by the City or any other governmental entity, and shall be subordinate to any prior lawful occupancy or use by any other person, and shall be subordinate to any prior easements; provided, however, that nothing in this License shall extinguish or otherwise interfere with property rights established independently of this License.

2.16 Whenever the Licensee shall cause any opening or alteration whatever to be made for any purpose in any public streets, public places or property of third parties, the opening or alteration shall be completed and restored with due diligence within a reasonably prompt time. The Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

2.17 Licensee shall maintain As-Built Drawings of its facilities located within the public rights-of-way and easements, furnish a copy both (1) electronically in StatePlane Coordinate System Arizona Central Zone, US feet North American Datum 1983 (NAD83) or CAD Format AutoCAD 2004 DWG or higher version tied to Public Land Survey System monuments and (2) in hard copy to the City. Licensee shall cooperate with the City to furnish such information in an electronic mapping format compatible with the then current City electronic mapping format upon completion of new or relocation construction of underground facilities in the public highways, public streets and public easements. Licensee shall provide the City with installation records in an electronic format compatible with the then current City electronic mapping format showing the location of the underground facilities. The Licensee shall comply with Arizona Revised Statutes § 40-360.21 *et seq.* by participating as a member of the Arizona Blue Stake Center (or other appropriate organization selected by the City) with the necessary records and persons to provide the location and identity of Licensee's underground facilities upon receipt of a locate call or as promptly thereafter as possible, but in no event later than two (2) working days after receipt of a locate call. A copy of their agreement or proof of membership shall be filed with the City.

2.17.1 Licensee shall provide horizontal and vertical locations through offsets and stationing of their facilities, using a preferred horizontal datum, as requested by the City for City projects. In the event the horizontal and vertical locations are not known or provided, the Licensee shall reimburse the City for actual costs associated with locating or potholing their facilities.

2.18 Licensee shall maintain a local agent within Maricopa County, who is familiar with the Licensee's facilities and who is responsible for satisfying the information needs of the City and other right-of-way users. Licensee shall be available to staff employees of any City department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Telecommunications System. City may contact by telephone the Licensee at the following phone number 602-889-0676 (Lee Stauber) or 602-889-6007 (Jerry Smith). Additionally: 800-360-4467, 24-hour repair network center regarding such problems or complaints.

2.19 City and ELI agree that ELI shall provide the compensation detailed in 2.19.1. This compensation does not relieve ELI from paying other lawful City fees and charges, such as those set forth in Section 2.12 above, associated with the issuance of Right-of-Way Permits or Right-of-Way Encroachment Permits, traffic barricade fees, fees for changes in the preceding, fees set forth in the City Transportation Department's Schedule of Fees and Charges (as from time to time in effect), or other application and permit fees. In addition, this compensation does not relieve Licensee from obtaining (and Licensee shall obtain) any required business/sales tax license, nor from paying (and Licensee shall pay) any applicable City, county, and state transaction privilege and use tax. None of the fees or compensation set forth herein shall be an offset to the transaction privilege tax under A.R.S. 9-582, which Licensee is obligated to pay.

2.19.1 Licensee will construct and deed over to the City one working pair of fibers in each new excavation in the Public Streets ("City Telecommunications Facilities"), up to a total cost to Licensee of \$5,000.00 in the aggregate, and not per build. The City shall not sell the City Telecommunications Facilities to a competitor or use them to compete against Licensee. Any maintenance or repairs to the City Telecommunication Facilities shall be performed by Licensee at the City's cost, on a pass-through actual-cost basis plus labor and materials.

2.19.2 The City may choose, up to the \$5,000.00 aggregate limit, the new excavations in which ELI will provide the City Telecommunications Facilities.

2.20 If Licensee's uses of the Telecommunications System change, Licensee shall provide the City with notice of such a change within thirty (30) days.

2.21 When construction of a City project coincides with Licensee's need or desire to expand its Telecommunications System, the Parties agree that they will co-locate in the same trench and pay the construction costs associated with their respective facilities.

2.22 The City may confirm Licensee's compliance with the terms of this License Agreement by requesting the opportunity to inspect records of the Licensee. In order for the

Licensor to determine the Licensee's compliance with the terms of this License, within 10 days of notice by Licensor of a request for disclosure, the Licensee shall provide relevant documentation as requested by Licensor including, but not limited to, regular reports as needed to establish Licensee's compliance with the various requirements and other provisions of this Agreement. Upon request Licensee shall provide to City copies of any communications and reports submitted by Licensee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this License Agreement. If the Licensee determines that in order to respond to Licensor's request for documentation and inspection that it must reasonably provide Proprietary Information, the Proprietary Information disclosed by the Licensee to the City or its constituent departments and shall be regarded as proprietary.

2.23 Proprietary information disclosed by the Licensee means any document or material (a) marked or otherwise specifically identified as proprietary, (b) or that is otherwise confirmed to be proprietary ("Proprietary Information"). Proprietary Information shall include, but not be limited to, any customer lists, financial information, technical information, or other information clearly identified as confidential pertaining to the services provided by the Licensee to its customers.

2.24 Proprietary Information disclosed by the Licensee to the City or its constituent departments shall be regarded as proprietary as to third parties. If the City receives a request to disclose Proprietary Information, the City shall notify Licensee of the request and allow Licensee a reasonable opportunity to defend its information from disclosure.

2.25 Notwithstanding any provision in this License, the Licensee acknowledges and understands that Licensor is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. §§ 39-121 *et seq.*)

2.26 The parties agree that this License is intended to satisfy the requirements of the Applicable Laws, administrative guidelines, rules, order and ordinances. Accordingly, any provision of this License which conflicts with the Applicable Laws shall be invalid and unenforceable, whether occurring before or after execution of this License, it being the intention of the parties: (i) to preserve their respective rights and remedies under the Applicable Laws; and (ii) that the execution of this License does not constitute a waiver of any rights or obligations by either Party under the Applicable Laws. In the event that a provision is invalid and unenforceable, all other provisions shall remain in full force and effect. Both the City and Licensee expressly reserve all rights they may have under law to the maximum extent possible; neither the Licensor nor the Licensee shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this License.

SECTION 3. Performance Bond, Permitting, Insurance and Hazardous Substances

3.1 During the term of this License, the Licensee shall file and maintain until completion of the initial Telecommunications System described on Exhibit A, an irrevocable Letter of Credit issued by a registered Arizona bank, approved by the City Engineer and the City Attorney, in favor of the City for a sum of One Hundred Thousand Dollars (\$100,000.00) to

guarantee that the Licensee shall well and truly observe, fulfill and perform each and every term of this License. In case of any breach of any condition of this License, any amount of the sum in the Letter of Credit, up to the whole thereof, may be forfeited to compensate the City for any damages it may suffer by reason of such breach.

At the discretion of the City Engineer, a performance bond will be accepted in lieu of a Letter of Credit. A faithful performance bond in favor of the City in the sum of One Hundred Thousand Dollars (\$100,000.00) to guarantee that the Licensee shall well and truly observe, fulfill and perform each and every term of this License. In case of any breach of any condition of this License, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate the City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Licensee, as principal, and by a corporation licensed by the Arizona Insurance Commissioner to transact the business of a fidelity and surety insurance company, as surety, and said bond shall be approved by the City.

3.2 Prior to applying for any permit to construct, install, maintain or perform any work in the Public Streets, which requires a construction permit from the City pursuant to applicable City Codes, the Licensee shall deposit into a suitable interest-bearing account, established by the Licensor, and the Licensee shall maintain on deposit through the term of this License, the sum of not less than Fifty Thousand Dollars (\$50,000.00) ("Security Fund"), as security for the faithful performance by it of all the provisions of this License, and compliance with all orders, permits and directions of any agency of the Licensor having jurisdiction over its acts or defaults under the License issued pursuant thereto, and the payment by the Licensee of any claims, liens and taxes due the Licensor which arise by reason of the construction, operation or maintenance of the facilities. Licensor shall have the full power of withdrawal of funds from the account except that all interest accrued shall be payable to the Licensee on demand. No withdrawals shall be made from the Security Fund account without the prior written approval of the City Manager and prior written notice of intent to withdraw and opportunity to cure pursuant to Section 3.4 below to Licensee. Notwithstanding the foregoing, the form of the Security Fund may be a letter of credit, surety bond or other form of security acceptable to the City's Risk Manager.

3.3 Within thirty (30) days after notice to Licensee that any amount has been withdrawn by the Licensor from the Security Fund pursuant to Subsection 3.2 above, the Licensee shall deposit a sum of money sufficient to restore such Security Fund to the original amount. Licensee grants to Licensor, to the broadest extent allowed under law, all rights of setoff and recoupment with regard to the funds in the Security Fund and the bond with regard to any claims, counterclaims, or other rights of the City arising under or related to this License.

3.4 If the Licensee fails, within ten (10) business days of a notice of intent to withdraw from the Security Fund, to pay to the Licensor any taxes or fees due and unpaid; or fails to repay to the Licensor, within such ten (10) business days of such notice, any damages, costs or expenses which the Licensor shall be compelled to pay by reason of any act or default of the Licensee in connection with this License; or fails, within thirty (30) days of such notice of failure by the Licensor to comply with any provision of the License which the Licensor reasonably determines can be remedied by an expenditure of the Security Fund, the Licensor

may immediately withdraw the amount thereof, with interest from the Security Fund. Upon such withdrawal, the Licensor shall notify the Licensee of the amount and date thereof.

3.5 The Licensee shall be entitled to the return of such Security Fund, or portion thereof, as remains on deposit at the expiration of the term of the License, or upon termination of the License at an earlier date, provided that there is then no outstanding default on the part of the Licensee. Any funds that the City erroneously or wrongfully withdraws shall be returned to Licensee, with interest of 1.0% per month, within thirty (30) business days of such a determination.

3.6 The rights reserved to the Licensor with respect to the Security Fund are in addition to all other rights of the Licensor whether reserved by this License or authorized by law, and no action, proceeding or exercise of a right with respect to such Security Fund shall affect any other right the Licensor may have.

3.7 Any trimming of trees by the Licensee in the Public Streets shall be subject to such regulation as the City Manager or other authorized official may establish to protect the public health, safety, and convenience.

3.8 The City may issue reasonable policy guidelines to Licensee and all Telecommunications Services and Interstate Telecommunications Services licensees and permittees to establish procedures for determining how to control issuance of engineering permits to multiple licensees for the same one-mile segments of their facilities. The Licensee agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City Manager or his designee to coordinate the issuance of multiple engineering permits in the same one-mile segments.

3.9 Before the start of construction or repair work (other than emergency repairs) with public rights-of-way, easements or City-controlled property, plans showing the proposed location of facilities to be constructed in relation to the location of other known adjacent conduit and facilities, shall be submitted to the City Engineering Department for its review and approval. These plans shall be prepared and submitted in accordance with the Mesa's permit process for securing a permit for utility construction in the public right-of-way and easements, a copy of which has been provided to Licensee. At the time of construction, the constructor shall obtain a Right-of-Way Permit and/or Right-of-Way Encroachment Permit, shall be in addition to the costs of any other permit, license or other documents required by existing applicable federal, state or local laws. During construction, the City will inspect all trenching, backfilling and other related items and Licensee shall reimburse the City its actual, reasonable and documented inspection costs.

3.10 Licensee shall pay the City Engineering Department the amount billed monthly for the actual fully documented direct cost of the City's inspection and review services incurred during the previous month due to construction activities of the Licensee in the public right-of-way. The amount shall be due within thirty (30) days of receipt of the monthly billing. Licensee shall have the right during regular office hours to examine and to make copies of the City

accounting records on time and cost incurred for inspection services provided to Licensee for work in the public right-of-way.

3.11 Licensee shall be responsible for maintaining accurate and current records of the location of all facilities and furnish this information upon request to the City.

3.12 Insurance. General Requirements

3.12.1 Licensee, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section with companies possessing a current A.M. Best, Inc. rating of A-, or better and legally authorized to do business in the State of Arizona with policies consistent with that required by the City of Mesa Code and regulations.

3.12.2 All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of City, constitute a breach of this Agreement and may result in termination of this Agreement, as set forth in Section 9.

3.12.3 All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall include, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

3.12.4 Licensee's insurance shall be primary insurance over any insurance available to the City and as to any claims resulting from this Agreement, it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

3.12.5 The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials and employees for any claims arising out of the Licensee's acts, errors, mistakes, omissions, work or service.

3.12.6 The insurance policies may provide coverage, which contain deductibles or self insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of the Licensee shall be solely responsible for the deductible and/or self-insured retention.

3.12.7 In the event that coverage afforded under any of the policies required herein is reduced by insurers below what is required by this Agreement, Licensee shall, within twenty (20) days notice of such reduction by the insurers, provide Licensor with replacement certificates of insurance evidencing new policies effected in amounts such as are required by this Agreement.

3.13 Proof of Insurance-Certificates of Insurance.

3.13.1 Prior to commencing work or services under this Agreement, and upon renewal, Licensee shall furnish to City Certificates of Insurance (COI) and additional insured endorsements (AIE), as applicable, issued by Licensee's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect, subject to the review and approval from the City's Risk Management Division. Any COI or AIE must be retroactive to the Effective Date of this Agreement.

3.13.2 If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City in a timely manner.

3.14 Required Commercial General Liability Coverage.

3.14.1 Such insurance shall protect Licensee from claims set forth below which may arise out of or result from the operations of Licensee under this Agreement and for which Licensee may be legally liable, whether such operations be by the Licensee or by a sub-consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

3.14.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees.

3.14.3 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom.

3.14.4 Claims involving contractual liability insurance applicable to the Licensee's obligations under the Indemnification Agreement.

3.15 Commercial General Liability – Minimum Coverage Limits.

3.15.1 The Commercial General Liability Insurance required herein shall be written for not less than \$3 Million per occurrence and \$5 Million in the aggregate. Any combination between general liability and excess general liability alone amounting to a minimum of \$3 Million per occurrence and an aggregate of \$5 Million in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be broad as the Insurance Services Office, Inc.'s Additional Insured, Form B, CG 20101001 or equivalent, and shall include coverage for Licensee's operations and products, and completed operations.

3.16 Required Worker's Compensation and Employer's Liability Coverage.

3.16.1 Licensee shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1

Million for each accident, \$1 Million disease coverage for each employee, and \$1 Million disease policy limit. In case any work is subcontracted, Licensee's will require the Sub-Licensee to provide worker's compensation and Employer's Liability to at least the same extent as required by Licensee.

3.17 Required Automobile Liability Coverage.

3.17.1 Licensee shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1 Million each accident with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the Licensee's work. Coverage shall be at least as broad as coverage code 1, "any auto", Insurance Services Office, Inc. Policy Form CA 001, or any equivalent or replacements thereof. Such insurance shall include coverage for maintenance, operation and use with coverage limits of \$2 Million per accident for bodily injury and property damage.

3.18 Hazardous Substances.

3.18.1 Licensee is responsible for proper investigation and management of all Hazardous Substances under its control, including Hazardous Substances that it uses, generates or disposes of, and must comply with all Environmental Laws in carrying out its obligations under this Agreement. In the event Licensee releases to the environment Hazardous Substances under its control, to the extent that a governmental agency with jurisdiction requires reporting, investigation, cleanup or remedial measures to be taken, Licensee shall, at its sole cost and expense, promptly undertake such required actions. If Licensee discovers a Pre-existing Environmental Condition, Licensee shall immediately notify the Licensor.

3.18.2 "Hazardous Substances" for purposes of this Agreement means those substances defined as toxic or hazardous substances, pollutants, or wastes by federal and/or state Environmental Laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

SECTION 4. Installation of Telecommunications System.

4.1 Except as otherwise provided by this License or permitted by the City, all of Licensee's installations and Telecommunications System within the Public Streets shall be underground and shall meet the standard specifications and reasonable requirements of the City.

4.2 The Licensee's installation of the Telecommunications System in the Public Streets shall be reasonably coordinated with other utilities to accommodate opportunities for common trench installation along with other utility undergrounding. All installations shall be in conduit or innerduct as reasonably approved by the City Engineer. Provided, however, nothing herein shall require Licensee to incur any material additional expense to accommodate common installations.

4.3 Licensee intends to install a Telecommunications System in the Public Streets for use by businesses, entities and/or individuals. The Telecommunications System will be installed in multiple phases as agreed upon by Licensee and the City, and subsequently verified by the City. The Licensee will work to minimize the inconvenience to the citizens of the City and others who use the Public Streets impacted by the project by developing segments of the project to be completed in sequence. The sequencing shall be developed and implemented so as to complete portions of the Right-of-Way in sequence and to complete each phase of the project before beginning work on the next phase of the project. Licensee plans to build a fiber optic network installing industry standard equipment and components. Licensee's use of non-standard equipment or components is subject to the approval of the City Engineer or her designee. Licensee will install conduit and access points (manholes/pull boxes) using trenchless technology, whenever such technology feasible and reasonable. Licensee may supplement the Telecommunications System provided Licensee obtains the proper permit as required by City. Any supplements to the Telecommunications System are subject to the terms of this Agreement.

SECTION 5. Operation of the Facilities.

5.1 The authority granted by this License to use the public highway and public rights-of-way does not authorize Licensee's use of the facilities for operating a cable television system, a cable system or authorize the Licensee to operate as a cable operator as those terms are defined in the Communications Act of 1934 as amended, state law, or the City Code. The authority granted by this License does not authorize the use of the public highways and public rights-of-way for open video systems as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the City may require to occupy the highways to provide service other than Telecommunications System services.

5.2 Upon request by the City, Licensee shall provide City with documentation of what services are being offered by Licensee's facilities that are located within the City's public streets or public rights of way, provided, however, nothing in this Section 5.2 shall require Licensee to disclose to the City Licensee's end users who are not licensing, leasing or subleasing Licensee's facilities that are located within the City's public streets or public rights of way. If the Licensee determines that in order to respond to City's request for documentation it must reasonably provide Proprietary Information, the Proprietary Information disclosed by the Licensee to the City or its constituent departments shall be regarded as proprietary.

5.3 The Licensee shall comply with rules and regulations of the FCC and ACC that apply to the Telecommunications Services and Interstate Telecommunications Services Licensee is authorized to provide, including local exchange and interlata, or lit services over the Telecommunications System in the public highways and public rights-of-way Licensee is authorized to use by this License. Upon request Licensee shall provide to City copies of any license required by the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

SECTION 6. Licensee Abandonment of the Facilities, Term.

6.1 If the Licensee abandons use of all or any part of its Telecommunications System under or pursuant to the License, or upon cancellation, revocation or termination of the privilege herein granted, Licensee shall notify the City and may, subject to the City's approval, permanently abandon the improvements in place. In lieu of permanent abandonment, the City may require Licensee to the reasonable satisfaction of the City and, without cost or expense to the City, promptly to remove its facilities and to restore the public highways and public rights-of-way to a reasonable condition under the supervision of the City. Licensee agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating or necessary reconstructing of any portion of its Telecommunications System on Public Property. Upon permanent abandonment, if the City does not require removal, the Licensee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such facilities which are not removed as required by the City within one hundred twenty (120) days of either such date of termination or revocation of this License or the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. The Arizona Blue Stake Center must be notified to record facilities abandoned.

6.2 Nothing in Section 6.1 shall be deemed abandoned, or require Licensee to remove facilities that the Licensee uses for the provisions of services other than Telecommunications Services or Interstate Telecommunications Services, so long as such use of facilities for the provisions of the ongoing other services is authorized by Licensor pursuant to any separately issued authorization required by the City.

6.3 The right, privilege and license granted herein shall continue and exist for an initial term of five (5) years from the effective date hereof unless sooner revoked or canceled as provided in Section 9.1 below. Unless either Party gives written notice of its intention not to renew no less than sixty (60) days prior to the expiration of the then current five (5) year term, this License Agreement shall automatically renew for one (1) additional term of five (5) years.

SECTION 7. Transferability of License.

7.1 The right, privileges and License granted hereunder shall not be assigned or otherwise transferred without the expressed written consent of the City by an ordinance or resolution passed by the City Council, which consent shall be exercised in the City's sole and absolute discretion, which shall not be unreasonably withheld, conditioned or delayed. The new Licensee as approved by the City shall be equally subject to all the obligations and privileges of the original License including any amendments, which will remain in full effect, as if the new Licensee was the original Licensee.

7.2 The License shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Licensee, either by act of the Licensee or operation of law, without the consent of the City, which shall not be unreasonably withheld,

conditioned or delayed. Prior to any proposed assignment becoming final, the Licensee shall seek the consent of the City to such proposed assignment.

7.3 The approval of any change shall include an Assignment Agreement form to be signed by Assignee, Assignor and the City. The Licensee shall provide City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer or lease of the License, certified and sworn to as correct by the Licensee. The Licensee shall notify the City within sixty (60) days of any change in mailing address.

7.4 The assignment of License, including any amendments, shall be binding on the Assignee of the License as if Assignee had originally executed the License for the full term of the License.

7.5 Nothing in this Section shall be deemed to prohibit a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a Lender or creditor in the ordinary course of business. In the event a Lender assumes control of the assets and operation of the Licensee through a default of the Licensee in loan obligations, the Lender may assume the rights and obligations of the Licensee. The Lender may not transfer or change control of the License without submitting the change to the City for approval. If the Lender does continue operation on any basis at any time, he shall be subject to all provisions of the License. No later than three (3) years after assumption of control by the Lender, the Lender shall apply to the City for the right to continue assumption of control by the Lender or to transfer the License. Application by the Lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and shall not be unreasonably denied or upheld. A "Lender" as discussed herein shall not include a company, person or corporation or other entities who operate cable television systems or Fiber Optics Telecommunications systems as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the License without City Council review and approval.

7.6 Notwithstanding the foregoing, prior consent shall not be required for one transfer to any company which is owned or controlled or under common control and with the same direct parent as Licensee, and which is intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent, provided that, no such transfer shall be valid unless Licensee and the proposed transferee submit a binding agreement and warranty to the City stating that:

A. The proposed transferee has read, accepts and agrees to be bound by the License;

B. The proposed transferee assumes all obligations, liabilities and responsibilities under the License for the acts and omissions of Licensee, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which Licensee could not have exercised; and

C. The transfer will not substantially diminish the financial resources available to the Licensee.

7.7 Prior to completing such transfer described in Subsection 7.6, Licensee and the proposed transferee shall submit to the City a description of the nature of the transfer, and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License.

7.8 The City Network and improvements thereto shall be owned by the City in perpetuity. If the Licensee leases, assigns, sell, transfers, or otherwise conveys either in whole or in part any right, interest, or property, the City's ownership of the City Network and use of the Licensee' Telecommunication System shall remain in full force and effect and all rights thereto shall be binding upon any successors in interest.

SECTION 8. Nonexclusive License.

8.1 This License is not exclusive, and nothing herein contained shall be construed to prevent the City from granting other like or similar licenses or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted the City under the Constitution and laws of the State of Arizona.

8.2 Any and all rights granted to Licensee under this Agreement shall be exercised at Licensee's sole cost and expense and shall be subject to the prior and continuing right of City to use all Public Property exclusively or concurrently, with any other person or persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect Public Property. Nothing in this Agreement shall be construed to grant, convey, create, or vest a perpetual real property interest in land to Licensee, including any fee or leasehold interest, easement, or any franchise rights.

SECTION 9. Revocation of License, Termination.

9.1 The License granted hereunder may be revoked prior to its date of expiration by the Licenser, upon providing written notice to Licensee of the basis for revocation and granting Licensee (60) days within which to cure, if any one of the following events occurs:

A. The Licensee fails to comply with the material terms and conditions of the License or applicable law and does not remedy or cure such failure to comply within sixty (60) days ("Sixty-Day Cure Period") after its receipt of written notice thereof from City, provided that if such default cannot be cured within such sixty (60) day period, this period will be extended if Licensee commences to cure such default within such sixty (60) day period and proceeds diligently thereafter to effect such cure; provided, however, City may revoke the License and privileges granted hereunder without providing the Sixty-Day Cure Period if the City finds that Licensee's defect in performance under this Agreement or applicable law is due to intentional misconduct, is a violation of criminal law or is part of a pattern of violations if Licensee has already had notice and an opportunity to cure a defect in past performance or applicable law;

B. The Licensee is or becomes insolvent or is a party to a voluntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of Licensee as a going concern, or if there is any similar action that affects Licensee's capability to perform its obligations under this License;

C. The Licensee is the subject of a petition for involuntary bankruptcy not dismissed within sixty (60) days.

SECTION 10. Acceptance of License Terms and Conditions.

10.1 This License shall not become effective until written acceptance thereof shall have been filed by Licensee with the City Clerk of the City. By accepting this License, the Licensee covenants and agrees to perform and be bound by each and all terms and conditions imposed by the Charter and Code of the City and License. Licensee's execution of this Agreement shall constitute its acceptance of this Agreement as granted and its agreement to be bound by and to comply with and to do everything lawful which is required of the Licensee by this Agreement. Licensee shall execute this Agreement prior to the City's City Council's approval of this Agreement. Licensee's signature shall be acknowledged by the Licensee before a notary public. This Agreement is effective upon execution by both Parties.

10.2 Licensee hereby acknowledges that as a condition of acceptance of this Agreement, Licensee was required to be represented throughout the negotiations of the Agreement by its own attorneys and Licensee had the opportunity to consult with its own attorneys about its rights and obligations regarding this Agreement.

10.3 The Licensee acknowledges and accepts the right of the City to issue a License and Licensee agrees it shall not now or at any time hereafter challenge this right to issue the License in any way or in any City, State or Federal Court.

10.4 The Licensee has reviewed the Licensor's ability to grant a License and accepts such a License as the City may now be legally able to grant.

10.5 In the event of conflict between the terms and conditions of the License and the terms and conditions on which the City can grant a license or permission to use the streets and public ways as set forth in applicable federal law, Arizona law, the City Charter or Charter City Code, the applicable federal law, Arizona law, City Charter or Charter City Code shall, without exception, control.

10.6 Nothing in this License shall be deemed to waive the requirement of the various codes, ordinances and regulations of the City regarding permits, fees to be paid or manner of construction.

10.7 The Licensee shall have no recourse whatsoever against the City or its officials boards, commissions, agents or employees for any loss, costs, expense, or damage arising out of any provision or requirement of the Licensor because of the enforcement of the License or

because of defects in ordinance or License issuance, unless such loss, costs, expense or damage is caused by the City's negligence or willful misconduct.

SECTION 11. Records.

11.1 The City may inspect all of Licensee's books and records directly related to Licensee's compliance with the requirements of this License at Licensee's offices at any time during regular business hours upon twenty (20) calendar days' prior written notice, so long as such inspection is conducted in such a way as to minimize any disruption to Licensee's business operations.

SECTION 12. Partial Invalidity.

12.1 If any section, paragraph, subdivision, clause, phrase or provision of this License shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this License as a whole or any part of the provisions of this License other than the part adjudged to be invalid or unconstitutional.

SECTION 13. Condemnation by City.

13.1 The City reserves the right to acquire all of the Telecommunications System of Licensee used in the conduct of this License by the exercise of the right of eminent domain in accordance with the conditions set forth in the Arizona Revised Statutes and other applicable laws.

SECTION 14. Notices.

14.1 All notices, requests, demands, claims and other communications permitted or required to be given pursuant to this License must be in writing and shall be deemed duly given and received (i) if personally delivered, when so delivered; (ii) if mailed, three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below; (iii) if transmitted to the fax number specified below and the appropriate telephonic confirmation is received, provided that a copy of such notice, request, demand, claim or other communication is promptly thereafter sent in accordance with the provisions of clause (ii) or (iv) hereof; or (iv) if sent through an overnight delivery service in circumstances to which such service guarantees next day delivery, the day following being so sent. All such notices permitted or required to be delivered hereunder shall be addressed as follows:

If to the City:

City of Mesa
Engineering Department
P.O. Box 1466
Mesa, AZ 85211-1466

With a copy to:

Mesa City Attorney
20 E. Main Street
Suite 850
Mesa, AZ 85201

If to Licensee:

Electric Lightwave, LLC
Attn.: Department of Law & Policy
18110 SE 34th St
Building One, Suite 100
Vancouver, WA 98683
(360)558-6900

With a copy to:

Contract Administration
At same address

Either Party may from time to time designate any other address for this purpose by written notice to the other Party in the manner set forth above.

SECTION 15. Recitals.

15.1 The Recitals set forth at the beginning of this License are incorporated by reference into this License Agreement as binding contractual terms.

SECTION 16. Entire Agreement and Amendment.

16.1 This Agreement constitutes the entire agreement of the Parties regarding the matters set forth herein and may be amended or modified only by a written instrument signed by an authorized representative of each Party, except that Licensor may modify this Agreement as necessary to comply with applicable laws and regulations. In the event that an amendment in this Agreement is necessary in order for the Parties to comply with applicable laws and regulations, each Party must use good faith efforts to amend the Agreement to effect such compliance. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

SECTION 17. Governing Law.

17.1 This License will be governed by, enforced and construed in accordance with the laws of the State of Arizona, and any Party bringing a claim hereunder may bring such claim only in the Superior Court of Maricopa County, Arizona. The Parties hereby irrevocably designate this court as the only court of proper jurisdiction and venue for any actions or

proceedings relating to this Agreement and waive any objections or defenses relating to jurisdiction with respect to such action or proceeding. Each Party consents to service of process under the statutes and rules applicable to the Superior Court of Maricopa County, Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona. Notice is hereby given of the applicability of A.R.S. § 38-511, and pursuant to ARS § 38-511, City may cancel this Agreement at any time within three (3) years after its execution without further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of City is or becomes at any time while the Agreement is in effect an employee of or consultant to any other Party to this Agreement. The cancellation shall be effective upon receipt of written notice of the cancellation unless the notice specifies another time.

SECTION 18. Attorneys' Fees.

18.1 The prevailing Party in any litigation arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, court costs, and other litigation related costs and fees from the other Party.

SECTION 19. Liability Limitation.

19.1 The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operation of Licensee's Telecommunications System or the provision of services, or for any damages arising out of a Licensee's use of the public rights-of-way, unless caused by the City's negligence or willful misconduct.

19.2 In no event shall the City or Licensee be liable to each other for taxes levied on income, lost profits, or indirect, incidental, consequential, special, or punitive damages.

19.3 No Party will be liable to the other Party with respect to any failure to fulfill its obligations under this License, if such failure is due to reasons beyond its reasonable control, including, but not limited to, governmental interference, direction or restriction, terrorist activity, war or civil commotion, strikes, lock-outs, labor disputes, public enemy, blockade, insurrections, riots, acts of nature, epidemics or quarantine restrictions.

SECTION 20. No Waiver.

20.1 No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this License Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

SECTION 21. No Third Party Beneficiaries.

21.1 This License is intended to be for the sole benefit of City and Licensee and there shall be no third-party beneficiaries of this License or any provisions hereof. Nothing in this

Agreement shall confer on any person or entity, other than City and Licensee, any rights, benefits or remedies under or by reason of this Agreement.

SECTION 22. Remedies Not Exclusive.

22.1 The remedies set forth in this License are not exclusive. Election of one remedy shall not preclude the use of other remedies.

SECTION 23. Miscellaneous.

23.1 City Intervention. The City shall have the right of intervention in any suit or proceeding involving this Agreement to which Licensee is a party, and Licensee shall not oppose that intervention.

23.2 Compliance with A.R.S. §§ 41-4401 and 23-214. [To the extent applicable under A.R.S. §§ 41-4401 and 23-214, Licensee represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. § 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

23.3 Covenant Not to Sue. The Parties resolution of the per foot fees and compensation as set forth in Section 2 is a complete resolution of their differences in this regard, and both Parties covenant and agree not to sue or contend to the contrary in any court, tribunal or proceeding.

SECTION 24. Survival.

24.1 The rights and obligations of the parties under Sections 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23 and this Section 24, and any other obligations which reasonably should survive expiration or other termination or completion of this Agreement shall remain in full force for a period of three (3) years following any such termination, expiration or completion except that if an action is brought by either Party prior to the expiration of three (3) years following any termination, expiration or completion of this Agreement, the provisions of this Agreement that are the subject of such action shall survive until any settlement, judgment or order resulting from such action is fully satisfied.

[SIGNATURES ON FOLLOWING PAGE]

This License executed this ____ day of _____, 2015 (The "License Date").

City of Mesa, an Arizona municipal corporation

By _____
Christopher J. Brady
Its: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ACCEPTED

Electric Lightwave, LLC, a Delaware limited liability company

By _____
Name _____
Title _____

ATTEST:

Its _____


Assoc General Counsel