

## **FIBER ACCESS AGREEMENT**

This Fiber Access Agreement (“Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_ 2026 (the “Commencement Date”) by and between the City of Mesa, an Arizona municipal corporation (“Mesa”), and the City of Apache Junction, an Arizona municipal corporation (“Apache Junction”). Mesa and Apache Junction may be referred to herein individually as a “Party” or collectively as “the Parties”.

### RECITALS

WHEREAS Apache Junction has requested access to two (2) strands of single-mode fiber optic cable from Mesa’s existing fiber optic infrastructure (the “Mesa Network”) for the purpose of establishing connectivity to the Maricopa Association of Governments-supported Regional Community Network; and

WHEREAS Mesa has available capacity within the Mesa Network in locations that are both accessible and suitable for Apache Junction’s needs; and

WHEREAS Mesa desires to assist Apache Junction in the interest of promoting public safety within the region; and

WHEREAS given the nexus between Apache Junction’s proposed use of the Mesa Network and the interests of public safety, Mesa is willing to allow access to the needed strands free of charge.

### AGREEMENT

NOW THEREFORE, in consideration of the promises, the mutual covenants, terms and conditions herein contained, Mesa and Apache Junction do hereby mutually covenant and agree as follows:

1. **Definitions:** For the purpose of this Agreement, the following terms when used herein shall have the following meaning:
  - 1.1. “Loaned Fiber” means unlit optical fiber cable strands for which the user plans to attach equipment to transmit data.
  - 1.2. “Apache Junction Facilities” means all facilities, including but not limited to fiber optic cables, equipment, and all associated hardware, owned and/or utilized by Apache Junction, that occupy and use the Mesa Network.
  - 1.3. “Mesa Network” means the optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by the Mesa and located throughout the rights-of-way of Mesa.

## 2. Scope of Use:

2.1. Loaned Fibers. Subject to the terms and conditions of this Agreement, Mesa hereby grants to Apache Junction a non-exclusive grant to use two (2) strands of single-mode fiber optic cable in the Mesa Network (the “Loaned Fibers”) as depicted on Exhibit A and further identified in Exhibit B, on the condition Apache Junction shall be in compliance with all of the covenants, terms, and conditions of this Agreement. Apache Junction shall comply with all applicable ordinances, statutes and regulations of local, state and federal government agencies. At no point shall Apache Junction assume any ownership interest in the Loaned Fibers. This grant is subject to the right of Mesa to occupy and use the public rights-of-way, public utility easements, private property, and any other property in and on which the Mesa Network is located. Mesa shall designate the location of the Apache Junction Facilities on the Mesa Network. Nothing in this Agreement shall be deemed to grant, convey, or vest with Apache Junction an interest or estate in the Mesa Network or any land, including but not limited to any fee, leasehold, easement or franchise.

### 2.2. Installation and Maintenance:

2.2.1. Apache Junction’s Facilities shall be installed and maintained in accordance with the requirements and specifications of MAG Standards, Mesa Amendments to MAG, Building Industry Consulting Service International (“BICSI”), the then current editions of the National Electrical Code (“NEC”) and the National Electrical Safety Code (“NESC”), each of which are incorporation by reference in this Agreement, and the rules and regulations of the Occupational Safety and Health Act of 1970 (“OSHA”), and in compliance with any lawful rules or orders now in effect or that may hereafter be adopted by Mesa or other authority having jurisdiction.

2.2.2. Apache Junction hereby acknowledges and agrees that it shall be solely responsible for all costs associated with the procurement and installation of all materials, all associated labor, and any related services necessary to establish and maintain the connection of the Regional Community Network from Mesa’s Transportation Management Center (“TMC”) to the Apache Junction facility for the life of this Agreement. This obligation includes, but is not limited to, the design, construction, implementation, testing, maintenance, and any ancillary activities required to facilitate full integration with the Mesa TMC infrastructure. Apache Junction shall ensure compliance with all applicable standards, such as M66, Division 27, City of Mesa APL and Telecommunications

industry standards.

2.2.3. Apache Junction shall be responsible for ensuring the direct physical path for the connection and the fusion splicing to be performed at Ironwood Drive and Elliot Road. Apache Junction is responsible for any professional services required to perform this work. Any necessary outside physical plant connectivity must be coordinated with Mesa. Mesa staff is responsible for all other fiber connections. All such work shall be completed by August 25, 2026.

2.2.4. Mesa shall be responsible for maintenance of the Mesa Network in accordance with applicable laws, including but not limited to, A.R.S. §§ 40-360.21 through 40-360.32, and will continue to blue stake its own facilities in compliance with state law.

2.3. Additional Fibers. Upon request, and if capacity is available, Mesa may loan additional fibers to Apache Junction during the remainder of the Term of this Agreement so long as Apache Junction is not in material breach of this Agreement. All requests by Apache Junction for additional fibers shall be made in writing to Mesa's Right of Way Manager and its Director of Innovation and Technology.

2.4. Removal at End of Term. Upon expiration or termination of this Agreement, Mesa shall determine whether Apache Junction's Facilities shall be removed or remain in place. If Mesa determines that the Apache Junction Facilities shall be removed, then Mesa shall notify Apache Junction, and Apache Junction shall, within thirty (30) calendar days of such notification, remove its facilities under the direction of Mesa.

2.5. Agreements with Third Parties. Nothing in this Agreement shall act as a limitation, restriction, or prohibition on Mesa from entering into agreements with other parties concerning the use, maintenance, or operation of the Mesa Network. Apache Junction acknowledges that such an agreement with a third party may require the rearrangement of the Apache Junction Facilities. Apache Junction agrees that, in such event, Apache Junction will cooperate in good faith with such rearrangement work; provided, however, that Mesa shall give Apache Junction thirty (30) calendar days written notification of such intent to rearrange any impacted Apache Junction Facilities.

### **3. Term and Termination:**

3.1. This Agreement shall commence on the Commencement Date and shall continue for an initial term of three (3) years. The initial term may be extended automatically for not more than two additional three (3) year

terms.

- 3.2. Either Party may terminate this Agreement without cause, provided that the Party gives the other Party ninety (90) calendar days' prior written notice of termination. Either Party may terminate this Agreement for cause upon thirty (30) calendar days' prior written notice if the other Party fails to cure an Event of Default, as described in Section 9, below.

**4. Fees:**

- 4.1. In the interest of public safety and in light of the benefit that the Regional Community Network may provide to Mesa's own citizens, Mesa has agreed to allow Apache Junction to use the Mesa Network under the terms of this Agreement free of charge.

**5. Relocation:**

- 5.1. Mesa may, at its sole cost and expense, and upon reasonable notice to Apache Junction, relocate, repair, or remove portions of the Mesa Network, including the Loaned Fiber. In all cases, Apache Junction shall bear the costs incurred in any rearrangement, relocation, modification, or alteration of any Apache Junction Facility.
- 5.2. In the event of an emergency (as determined by Mesa in its sole and absolute discretion), Mesa may relocate, modify, or alter the Loaned Fibers and/or Mesa Network without prior notice to Apache Junction. In such event, as soon as reasonably practicable thereafter and not later than seventy-two (72) hours after having taken such action, Mesa will advise Apache Junction in writing of the emergency work performed or the action taken with respect to any emergency modification or alteration of the Loaned Fibers and/or Mesa Network.

**6. Limitations of Use:**

- 6.1. Apache Junction shall use the Mesa Network only for the purpose of the transmission of data. If Apache Junction uses the Loaned Fibers and/or any other portion of its facilities to transmit or facilitate the transmission of commercial video services, then Apache Junction shall apply for a cable license and pay all fees associated with such services required under applicable law.
- 6.2. Apache Junction shall not unreasonably interfere with any other party's permitted use or access to the Mesa Network. Apache Junction shall, at its own expense, maintain any equipment it utilizes to access the Mesa Network pursuant to this Agreement in good repair and in a manner that prevents such

conflict or interference.

- 6.3. Apache Junction is prohibited from accessing the telecommunications infrastructure, the transmission pathway, or any Mesa electric or other utility facility. Only personnel authorized by Mesa will be allowed to connect the Apache Junction Facilities to, or disconnect the Apache Junction Facilities from, the Mesa Network.

## **7. Indemnity:**

- 7.1. To the fullest extent permitted by law , Apache Junction shall indemnify, defend and hold harmless Mesa, its City Council, officers, employees, and agents from and against any and all demands, claims, injuries, losses, or liabilities of any nature, including death or injury to any person, property damage, or any other loss and including without limitation all damages, penalties, fines and judgments, associated investigation and administrative expenses and defense costs, including, but not limited to reasonable attorney's fees, courts costs and costs of alternative dispute resolution, arising in whole or in part out of, or resulting in any way from or in connection with the performance of this Agreement. Apache Junction's obligations under this Section apply regardless of whether liability is caused or contributed to by any negligent (passive or active) act or omission Mesa, except that Apache Junction shall not be obligated to indemnify for liability arising from the sole negligence or willful misconduct of Mesa. The provisions of this Section survive the expiration or termination of this Agreement.

## **8. Damage or Destruction:**

- 8.1. In the event of a total or partial destruction of substantially all of the Apache Junction Facilities, or any part thereof, where such casualty occurs as a result of an event of Force Majeure, whether or not such casualty is covered under a policy of insurance carried by Apache Junction, this Agreement may be terminated at the option of Apache Junction, or Apache Junction may, at its sole cost and expense, commence and complete as soon as practicable the repair or restoration of the damaged Apache Junction Facilities, or any part thereof, to substantially the same condition immediately before the event of destruction.
- 8.2. In the event of a total or partial destruction of the Mesa Network, or any part thereof, including the Loaned Fibers, where such casualty occurs as a result of an event of Force Majeure, whether or not such casualty is self-insured or covered under a policy of insurance carried by Mesa, this Agreement may be terminated at the option of Mesa, or Mesa may, at its sole cost and expense, commence and complete as soon as practicable the repair or

restoration of the damaged Mesa Network, or any part thereof, including the Loaned Fibers, to substantially their same condition immediately before the event of destruction. If Mesa elects to terminate this Agreement, Mesa shall be relieved of any obligation to Apache Junction, and Apache Junction shall be released from its obligations under this Agreement.

## 9. **Default:**

9.1. Events of Default: The occurrence of any of the following shall constitute an Event of Default of this Agreement:

- (i) Failure to perform, observe or comply with any covenant, term or condition of the Agreement that either Party is required to observe or perform.
- (ii) Assignment or transfer of Apache Junction's interest in the Agreement, voluntarily or by operation of law.
- (iii) Assignment or transfer of Apache Junction's assets for the benefit of Apache Junction's creditors.
- (iv) Filing of a petition in bankruptcy or a petition for reorganization or other arrangement relating to the bankruptcy, insolvency, or receivership of Apache Junction and/or its assets, unless the same is dismissed within one hundred eighty (180) calendar days of the filing thereof.
- (v) Any representation or warranty of either Party that shall prove to have been incorrect, false, or misleading in any material respect when made.

9.2. Remedies for Default: The non-defaulting Party may terminate the Agreement upon the occurrence of an Event of Default caused by the defaulting Party, if the defaulting Party fails to cure the Event of Default within the period of time specified below. In an Event of Default of a financial nature, the defaulting Party shall cure the default within fourteen (14) calendar days of receipt of the notice of default. In the Event of Default of a non-financial nature, the defaulting Party shall cure the default within thirty (30) calendar days of receipt of the notice of default. A failure to cure an Event of Default within the specified period of time shall constitute a material breach of the Agreement.

9.3. Obligation to Perform: The termination of the Agreement due to an uncured Event of Default shall not relieve the defaulting Party of its obligation to perform its obligations, including the payment of the fees, prior to the

effective date of termination.

**10. Damages:**

10.1. Notwithstanding any other provision of this Agreement, neither Mesa nor Apache Junction shall be liable to the other for any consequential, incidental, indirect, liquidated, or special damages, or for lost revenues or lost profits to any person arising out of this Agreement or the performance or nonperformance of any provision of this Agreement, even if such Party has been informed of the possibility of such damages.

**11. Representations and Warranties:**

11.1. Mesa makes no representations, warranties, covenants, or assurances:

- (i) with respect to the design, construction, durability or suitability of the Mesa Network, or any part thereof, whether express or implied;
- (ii) with respect to the nature or accuracy of the description, location or measurement of the Mesa Network or any part thereof; or
- (iii) that Mesa will increase or decrease the number of dark fibers constituting any part of the Mesa Network at any time during the term of this Agreement.

11.2. Apache Junction represents and warrants that:

- (i) it is in compliance with all applicable laws, rules, regulations and tariffs relating to its activities covered by this Agreement;
- (ii) it has the requisite power and authority to carry on the business it now conducts; and
- (iii) the execution, delivery and performance of its obligations under the Agreement have been duly authorized.

**12. Assignment:**

12.1. Restrictions on Assignment: Except as otherwise provided in this Agreement, Apache Junction may not sell, assign, sublease or otherwise transfer in whole or in part (whether voluntarily or by action of law), directly, indirectly, or contingently this Agreement or any interest in this Agreement to any third party.

**13. Waiver:**

13.1. The consent of a Party to any act or omission of the other Party shall not be deemed to imply consent to or constitute a waiver of a default or breach of any term or condition of the Agreement or a continuing waiver of a subsequent default or breach of the same or different term or condition, nor shall any custom or practice which may arise between the Parties in the administration of the Agreement be construed to waive or lessen the right of a Party to insist upon full performance of the other Party in strict compliance with the covenants, terms and conditions of the Agreement. No payment, partial payment, acceptance or partial acceptance by Mesa will operate as a waiver on the part of Mesa of any of its rights under the Agreement.

**14. Notices:**

14.1. All notices hereunder must be in writing and shall be deemed validly given if delivered personally or if sent by certified mail, return receipt requested, by commercial overnight delivery service, or by electronic transmission, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

If to COM:     Right of Way Manager  
                  20 N. Center St.  
                  Mesa, AZ 85211  
                  Telephone: 480-644-2503

If to Apache Junction: \_\_\_\_\_

City of Apache Junction  
Doug Wirthgen  
300 East Superstition Boulevard  
Apache Junction, AZ 85119

**15. Binding Effect:**

15.1. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties.

**16. Complete Agreement; Amendments:**

16.1. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth in this Agreement. Any modification of or amendment to this Agreement must be in writing and executed by both Parties. Each Party and its counsel have reviewed the Agreement. Accordingly, the normal rules of

construction to the effect that any ambiguity will be resolved against the drafting Party will not be employed in the construction and interpretation of the Agreement.

**17. No Third Party Beneficiaries:**

17.1. This Agreement is for the sole benefit of the Parties and their respective permitted successors and assigns and shall not be construed as granting rights to any person or entity other than the Parties or imposing on either Party obligations to any person or entity other than a Party.

**18. Governing Law; Venue:**

18.1. This Agreement shall be construed in accordance with the laws of the State of Arizona. Trial of any action regarding any dispute regarding this Agreement and/or any Proposal will be vested in the state courts of Maricopa County, Arizona.

**19. City Charter and Code:**

19.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Mesa. The Agreement will terminate without any penalty: (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year; or (ii) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal years and funds for Mesa obligations are no longer made available. This provision will take precedence in the event of a conflict with any other term or condition of the Agreement

**20. Conflict of Interest Statute:**

20.1. This Agreement is subject to, and may be terminated by, the Parties in accordance with, the provisions of A.R.S. § 38-511.

**21. Severability:**

21.1. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

IN WITNESS WHEREOF, Consultant and City have executed this Agreement as of the date first set forth above.

**CITY OF APACHE JUNCTION**, an Arizona municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
R. Joel Stern  
City Attorney

**CITY OF MESA**, an Arizona municipal corporation

By: \_\_\_\_\_  
City Engineer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Jim Smith  
City Attorney

Exhibit "A"

FIBER ROUTE

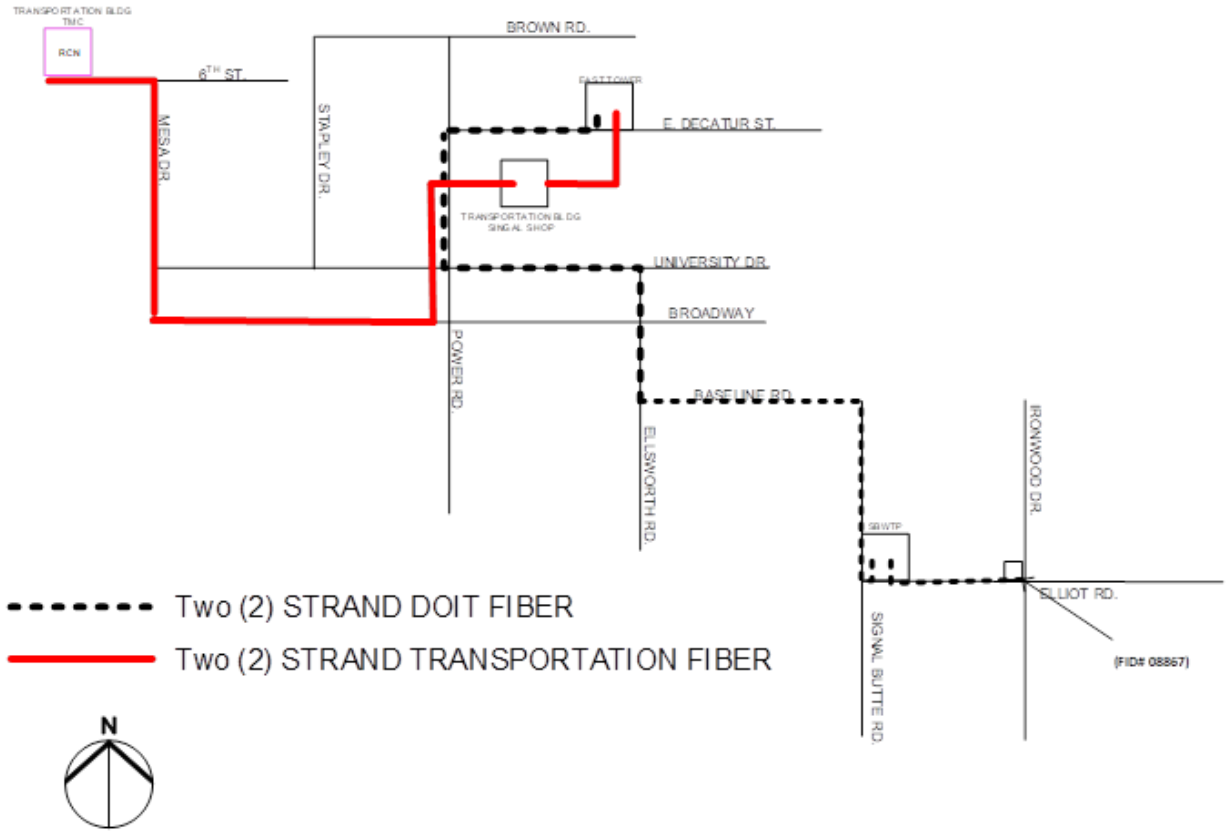


Exhibit “B”  
Proposed Route and Design for the  
Loaned Fibers and Apache Junction Facilities

Location(s) Where Services are Performed.

The proposed two (2) fiber strands, route is approximately 23 miles. It will originate at the intersection of Ironwood Drive and Elliot Road (northeast quadrant), extending through Signal Butte Water Treatment Plant and terminating at East Mesa Service Yard (East Tower) utilizing City of Mesa Department of Innovation and Technology fiber. From this termination point, the fiber path will cross connect to City of Mesa Intelligent Transportation Systems (ITS) fiber and extend the two strands at the East Mesa Service Yard (Transportation Building Signal Shop), and then to the 6th Street Service Yard (Transportation Building) ending at the Regional Community Network (RCN) switch located in the Computer Room of the Transportation Management Center (TMC).

- A) Ironwood Dr and Elliot Rd – Apache Junction is responsible for fusion splice of two (2) strands;
- B) Signal Butte Water Treatment Plant – City DoIT to install one (1) duplex fiber jumper;
- C) East Mesa Service Yard (East Tower) - City DoIT to install one (1) duplex fiber jumper
- D) East Mesa Service Yard (Signal Shop) – City ITS Group (Transportation Department) to install one (1) duplex fiber jumper;
- E) 6th Street Service Yard (Transportation Building) - City ITS Group (Transportation Department) to install one (1) duplex fiber jumper; and
- F) Transportation Management Center (TMC) - City ITS Group (Transportation Department) to install one (1) duplex fiber jumper.