

FIBER LICENSE AGREEMENT

This Fiber License Agreement (the "License Agreement" or "Agreement"), is issued on July ___, 2022 by the City of Mesa (hereinafter called "Licensor" or "City"), an Arizona municipal corporation, to SiFi Networks Mesa LLC, a Delaware limited liability company (hereinafter called "Licensee" or "SiFi").

A. WHEREAS, Licensee has applied to the City for a License for the installation, placement, operation and maintenance of an underground fiber optic network system in, on, under, upon, along and across Public Highways (as that term is defined in A.R.S. § 9-581) within the City (as used herein, "Public Highways");

B. WHEREAS, by such authority as may be conferred by state and federal law, the Mesa City Charter, and Mesa City Code, the City is issuing this License; and

C. WHEREAS, pursuant to Resolution No. _____, the City Council has duly authorized the City Manager or his designee to execute a license with Licensee to construct, install, operate, and maintain a Communications Network (as defined below) in, on, under, upon, along and across certain Public Highways within the City.

D. WHEREAS, if used in this Agreement, "Party" means either Licensor or Licensee and "Parties" means both Licensor and Licensee.

NOW, THEREFORE, the Licensor hereby grants to the Licensee the License (as defined in Section 2.1) as follows:

SECTION 1. Definition of Terms. Unless otherwise defined herein, the terms, phrases, words and their derivatives found in this License Agreement shall have the meaning defined in Title 9, Chapter 14, Sections 1-3 of the Mesa City Code as amended from time to time. Unless the context requires otherwise, the term "including" shall mean "including but not limited to" or "including without limitation."

"Cabinets" means above ground enclosures placed within the Public Highway for the protection of active and passive equipment for the provision of service throughout the Communications Network.

"Chambers" means underground enclosures placed within the Public Highway facilitating access to the active and passive equipment for the provision of service throughout the Communications Network.

"Communications Network" means all parts of Licensee's fiber optic network under and above ground in the City, including the fiber optic cable and its component parts and appurtenances, and the other cables, wires, components, facilities, Cabinets, ducts, conduits, connectors, Shelters, Chambers, manholes, manhole covers, pedestals, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the fiber optic network.

“**Drop**” means the fiber optic cable run from the Communications Network at the edge of the Public Highways or the Fiber Access Box (“FAB”) or the Toby Box in the Public Highways, as the case may be, to the Premises wall.

“**Home**” means a residential single-family dwelling, or a residential single dwelling unit located within a Multiple Dwelling Unit, located within the Use Area.

“**Multiple Dwelling Unit**” means an apartment building or other building containing more than four dwelling units located within the Use Area.

“**Premises**” means a Home, Multiple Dwelling Unit, office or other building located within the Use Area.

“**Shelter**” means the above ground facility housing equipment for the Communications Network. This License Agreement acknowledges that Shelters shall be part of the Communications Network, but does not authorize the placement of Shelters within the Public Highways.

“**Use Area**” means the legal boundaries of the City as of the Effective Date, and any additions or subtractions to the City legal boundaries, by annexation or other legal means.

SECTION 2. License Granted.

2.1 There is hereby granted to Licensee a revocable and non-exclusive license to erect, construct, repair, maintain, replace, operate, lease, install, remove, reconstruct, and upgrade the Communications Network in, on, under, upon, along and across the Public Highways within the Use Area, and to make the Communications Network available to all Premises within the Use Area, subject to the applicable provisions of this License Agreement, 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”). Licensee shall have the right, subject to City approval of the applicable permits, which approval shall not be unreasonably withheld, delayed, or conditioned, to determine the final engineering design including but not limited to depth, width, and height, of all equipment and other parts of the Communications Network, provided the proposed design and construction is consistent with the City of Mesa Engineering & Design Standards.

2.1.1 For the purposes of the License, Communications Network does not include a "Multichannel Video System" as defined below.

2.1.2 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.

2.2 Any privilege claimed under this License by Licensee in any Public Highway shall be subordinate to any prior or subsequent occupancy or use by City and shall be subordinate to any prior lawful occupancy or use by any other entity, 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 Agreement.

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

2.4 Except as otherwise set forth in this License Agreement, the Communications Network and all of its parts and components which are installed and constructed by Licensee in the License Area shall at all times be and remain the property of Licensee.

2.5 Licensee shall comply with any applicable law or regulation of the Federal Communications Commission ("FCC") or the Arizona Corporation Commission ("ACC") to engage in business activities associated with use of the Public Highways; 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 Agreement without a written modification to this License Agreement.

2.6 This License Agreement 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 are subject to a uniform video service license. For purposes of this License Agreement, "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.

2.7 The City will comply with all applicable laws and act in accordance with its standard procedures in reviewing and processing all applications for permits submitted under this License. If Licensee desires greater control over the speed of the permitting process, then Licensee may, by separate agreement, request that City engage an independent consultant to work alongside City staff, and who will be solely dedicated to the processing of Licensee's applications

SECTION 3. Construction, Maintenance, Relocation, and Conditions.

3.1 The Communications Network constructed, installed, operated, leased, repaired, replaced, removed, abandoned, or maintained pursuant to this License Agreement shall be constructed, installed, operated, leased, repaired, replaced and maintained in accordance with the City of Mesa's Engineering & Design Standards and all other applicable codes, regulations, policies, and standards, whether mandated by the City, State of Arizona or any other governmental entity with jurisdiction over the Public Highways and, at a minimum, consistent with the terms of this License Agreement. Public Highways under the control of the City shall be used according to plans approved by the City Engineer or their designee. Prior to the installation, construction, maintenance, abandonment, replacement, extension or relocation of any portion of the Communications Network authorized herein, Licensee shall apply for and obtain from City a Right-of-Way Permit pursuant to Title 9, Chapters 1 and 2 of the Mesa City Code for such work on the Communications Network. City shall issue such permits to Licensee on such conditions as are lawful and reasonable to ensure compliance with the terms and conditions of this License Agreement. All work performed under this License Agreement shall be done in compliance with Right of Way Improvement Standards, the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, City amendments to MAG, Mesa Standard Details and Specifications, Mesa's Approved Product List and Technical Specifications, Mesa's Construction Material Field Testing Handbook, and Occupational Safety and Health Administration ("OSHA") regulations, as all of which may be amended from time to time. Licensee shall use materials compliant with MAG, the City amendments to MAG, and Mesa's Construction Material Field Testing Handbook in the remediation of City or third-party facilities necessitated as a result of Licensee's actions under this License Agreement. If the remediation of third-party facilities requires the use of materials not specified in MAG, the City Amendments to MAG, or Mesa's Construction Manual Field Testing Handbook, then Licensee shall retain an independent testing company, approved by City in its reasonable discretion without undue condition or delay, to test and approve all such materials prior to use by Licensee, however, if Licensee then utilizes materials not so tested and approved, then Licensee shall remove and replace all such non-compliant materials with compliant materials.

3.1.1 Except as otherwise provided by this License Agreement, or permitted by the City, all of Licensee's installations and Communications Network within the City's Public

Highways, except for above ground facilities and Cabinets, shall be underground and shall meet the specifications set forth in the City of Mesa Engineering & Design Standards or in a City-issued permit. Shelters shall not be placed in the Public Highways.

3.1.2 The Licensee's installation of the Communications Network shall be in accordance with the City of Mesa Engineering & Design Standards and as set forth in a City-issued permit. Where possible installation and relocation of the Communications Network shall be coordinated with other utilities to accommodate opportunities for common trench installation. Participation in joint trench efforts is strongly encouraged but shall not be mandatory.

3.2 The Communications Network to be constructed, installed, operated, leased, repaired, replaced, maintained, upgraded and removed under this License, shall be so located as to interfere as little as reasonably possible with traffic or other authorized uses within Public Highways. Licensee shall provide engineering designs to the City, including intended locations of the Communications Network, prior to construction in accordance with City's permitting process. The Parties agree to cooperate in the selection of suitable sites for the Communications Network. Nevertheless, those phases of construction and installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of the Communications Network shall be subject to reasonable regulation by the City Engineer or designee and the City's permitting process.

3.2.1 Licensee shall submit the Right-of-Way Permit together with the details, plans and specifications for City review and consideration, and pay all lawfully applicable application, review, traffic barricading, material testing 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 Communications Network. The proposed locations of Licensee's planned initial installation of its Communications Network including related facilities or equipment shall be depicted more specifically on engineering drawings provided to City with the submittal of the plans and specifications during the permitting process. If Licensee desires to change the location of any part of the Communications Network, including any related facilities or equipment, from the location set forth in the initial Right-of Way Permit or Right-of-Way Encroachment Application(s), Licensee shall apply for a new permit prior to any relocation or construction. Such permits referred to in this Section 3.2.1 shall be identified by City log number and referenced as a summary of its Communications Network whenever and wherever such records are maintained.

3.2.2 Licensee shall maintain as-built drawings of the Communications Network and shall furnish electronic or hard copies, as requested by the City. Licensee shall cooperate with City to furnish such information in an electronic mapping format compatible with the then-current City electronic mapping format using the approved City datum.

3.2.3 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 Licensee's membership shall be submitted to the City upon request.

3.3 If Licensee damages, disturbs, or alters the surface or subsurface of any Public Highway or adjoining public property, any public improvement, landscaping, or property of third-parties, then Licensee shall promptly, at its own expense, and in a manner reasonably acceptable to the City, repair and restore the damage or disturbance to a condition substantially comparable to its prior state. In the event Licensee is unaware of the damage or unaware that the repair is unacceptable to the City, the City shall give Licensee notice and allow the Licensee the opportunity to repair. If Licensee fails to complete such repair within a reasonable time or in a manner reasonably acceptable to the City, then the City may perform such repair and Licensee shall pay all the actual, reasonable, and fully documented direct costs expended to complete the repair. It is hereby acknowledged that City policy requires that severed City-owned fiber must be completely replaced to nearest previously existing splice point. Any trimming of trees by the Licensee in the Public Highways shall be subject to such regulation as the City Engineer or designee may establish to protect the public health, safety, and convenience.

3.4 In the event of a public emergency, City shall have the right to sever, disrupt, or dig-up facilities of Licensee, after 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.

3.5 Licensee shall be solely responsible for all repairs, maintenance, and adjustments, and damage to the Communications Network and City shall have no obligation to repair such damage except where damage is caused by the sole and exclusive actions of the City or its agent. Excluding relocations reasonably requested by the City and repairs or maintenance to the Communications Network, Licensee shall not relocate, materially modify, or materially alter the Communications Network components any time after issuance of the permit(s), except upon City's written approval, which approval will not be unreasonably withheld, delayed, or conditioned.

3.6 Licensee shall bear the entire cost of timely relocating its Communications Network facilities located within Public Highways, the relocation of which is necessitated by the construction of public improvements by or on behalf of the City. If Licensee is required to relocate its Communications Network facilities due to the construction of a public improvement City shall provide Licensee with sixty (60) calendar days' notice before any required action of Licensee to relocate affected portions of the Communications Network and shall cooperate with Licensee to identify a replacement and alternative location within the Public Highways for the relocation of affected portions of the Communications Network. Licensee shall promptly remove the designated portions of the Communications Network. Licensee, at its sole cost and expense, shall restore all public and private property damaged by Licensee's removal and relocation of the Communications Network to a condition substantially comparable to the condition before removal and relocation of the Communications Network. City will make reasonable efforts to design and construct projects pursuant to this section so as to minimize relocation expenses to Licensee and shall entertain a reasonable request to support existing facilities in place. If Licensee fails to relocate as required

herein (except as allowed under Section 3.6.1 below), the Licensee shall reimburse City for actual and reasonable direct damages and costs incurred by City as a result of such delays.

3.6.1 City makes all reasonable efforts to avoid utility relocation. If in its sole discretion, City believes that Licensee's Communications Network can remain in place without disruption to public improvement activities or added expense to City, then the City may provide Licensee with the option to protect-in-place its facilities. If Licensee chooses to protect-in-place, it shall hold the City harmless from any subsequent damage or disruption to its facilities that would not have occurred had the facilities been relocated.

3.6.2 City hereby agrees to provide an annual permit for maintenance activities on its Communications Network that do not require excavation or disruption to the Public Highways, including but not limited to access to and from the FAB and/or or Toby Box to extend the Drop to a Premise.

3.7 The License granted herein is only for Licensee for the purpose of constructing, maintaining and operating the Communications Network. Transfer of the License or any interest therein or control of the Communications Network is subject to the provisions of Section 9 (Transferability of License), infra. A material consideration of City in granting this License to Licensee is Licensee's experience, reputation, knowledge, and business track record.

3.7.1 This License Agreement further authorizes Licensee to do the following:

(a) In its ordinary course of business to lease to or contract with others for use of all or part of the Communications Network, as distinguished from selling telecommunications services carried on the Communications Network. Any entity selling telecommunications services on the Communications Network must obtain a telecommunications license from the City.

(b) To lease or provide wholesale access to fiber or conduit that are part of the Communications Network to others that have contracts, franchises or other agreements with City to use its public property within the City (an "Existing Third-Party ROW User"), without further prior consent of City, provided that Licensee notifies the City of the identity of the Existing Third-Party ROW User.

3.7.2 The authority granted by this License is not in lieu of any other license or franchise the City may require to occupy the Public Highways to provide facilities or services other than access to unlit fiber; provided, however, that Licensee engages in activity requiring a separate license or franchise, that any payment required under such license or franchise shall be off-set by the payments made under this License Agreement. The Licensee agrees that if Licensee leases the Communications Network facilities to others for any other use, then Licensee shall condition the effectiveness of such upon the lessee applying for and obtaining from the City any required authorization for such use, including, if required, a telecommunications services license, or any other license that the City may require. Additionally, should Licensee's customers self-perform any work on the Communications Network within the Public Highways, then Licensee shall require that such customer provide to and indemnification of the City to the same extent required of Licensee in this Agreement.

3.7.3 Licensee agrees and will take reasonable actions to inform entities delivering telecommunications services over the Communication Network that Mesa City Code Section 9-14-2(A) requires persons using Licensee's facilities to obtain a telecommunication license if such person constructs, installs, operates or maintains telecommunication facilities within the Public Highways.

3.8 Licensee shall maintain a local agent within Maricopa County, who is familiar with Licensee's facilities and who is responsible for satisfying the information needs of City and other public rights-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 Communications Network. Licensee will provide the City's Right of Way Manager with emergency contacts before submitting for permits. The Licensee will inform City's Right of Way Manager immediately of any changes to its agent's contact information.

3.9 City may examine the business records of Licensee when reasonably required and permitted under applicable law, but in any event only during reasonable times and following no less than thirty (30) days' prior written notice, and only to the extent reasonably necessary to ensure compliance with the fees owed under this License Agreement or applicable tax laws. Licensee will keep business records reflecting its revenues for at least two (2) years thereafter.

3.10 Data Deliverable. Within sixty (60) days after the installation of any segment of the Communications Network, Licensee shall supply the City with electronic files showing the permitted route of the fiber optic cable associated with the Communications Network in a format agreed by the City for every two miles of construction of the Communications Network upon completion. The current required format for the electronic files shall be ESRI file geodatabase or shapefile format. The data shall be provided in NAD_1983_HARN_StatePlane_Arizona_Central_FIPS_0202_Feet_Intl (WKID: 2868 Authority: EPSG). Licensee shall supply GIS data attributes in a schema provided by the City, and within an accuracy of no less than one (1) foot for all components of the Communications Network. Upon prior approval by the City's Right of Way Manager, permittee may provide electronic files in a different electronic format or transfer the files to the City via email or file transfer protocol (FTP). The City will use data for project coordination.

3.11 Construction of the System. Licensee will use commercially reasonable efforts to commence construction on or before a date that is twenty-four (24) months after the Effective Date (the "**Construction Commencement Deadline**"); provided, however, in the event of a Force Majeure Event, the Construction Commencement Deadline shall be extended by the time impact resulting from the Force Majeure Event, as defined in Section 19. In addition, following Construction Commencement, Licensee annually shall provide City with a construction forecast for the upcoming three-year period until completion. Both Parties recognize and agree that Licensee cannot guarantee the Construction Commencement Deadline as many elements are outside of its control, but Licensee will keep the City informed of the progress of its schedule at reasonable intervals.

SECTION 4. Fees and In Lieu Payment.

4.1 Licensee shall pay all lawful compensation and taxes required by the Mesa City Code, including without limitation, the Annual ROW Underground Conduit Fee, all required application and permit fees, and the applicable fees under the City's Schedule of Fees and Charges, as may be amended from time to time.

4.2 In the interest of expanding fiberoptic service to as many Premises as possible, if a majority of the revenue Licensee plans to earn from wholesaling use of its Communications Network derives from providers that deliver fiber services to residential and small/medium business Premises, then Licensee shall have the option to pay the Annual ROW Underground Conduit Fee under either of the following fee structures:

4.2.1 Licensee may choose to pay the Annual ROW Underground Conduit Fee for each linear foot of conduit installed in the Public Highways. The fee shall be assessed on the annual anniversary of the date Licensee receives its first permit under this License Agreement. Once Licensee begins earning revenue, it may opt to pay 2% of its Gross Revenue from the Communications Network in lieu of the Annual ROW Underground Conduit Fee. "Gross Revenue" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from its customers for broadband internet services that are provided to its customers through the Communications Network located at least in part in Public Highways.

4.2.2 As an alternative to the fee structure in 4.2.1, Licensee may make a lump sum payment of \$300,000.00 (a "Lump Sum Pre-Payment") to the City for the right to occupy the Public Highways for a period of twenty-four (24) months (the "Pre-Payment Occupancy Period"). The Lump Sum Pre-Payment shall be due on the date Licensee receives its first permit under this License Agreement. At the end of the Pre-Payment Occupancy Period, Licensee's fee structure shall convert to either (i) payment of the published Annual ROW Underground Conduit Fee for each linear foot of conduit installed in the Public Highways, or (ii), if Licensee is earning revenue from its Communications Network, then it may choose to pay 2% of its Gross Revenue in lieu of the Annual ROW Underground Conduit Fee.

4.2.3 If Licensee elects to make a the Lump Sum Pre-Payment described in 4.2.2, then it also retains the option to convert its fee structure to payment of 2% of the Gross Revenue from its Communications Network if it begins earning revenue prior to the end of the Pre-Payment Occupancy Period. Upon that conversion, the City shall retain a pro-rata share of the Lump Sum Pre-Payment equal to the number of months that have passed under the Pre-Payment Occupancy Period. By way of example, if Licensee chooses to convert to the 2% of Gross Revenue fee structure on the thirteenth month of the twenty-four-month Pre-Payment Occupancy Period, then the City shall retain 13/24ths of the Lump Sum Pre-Payment, and the remaining 11/24ths shall be applied as a credit towards future payments of Gross Revenue.

4.3 Alternatively, Licensee may provide in-kind material or services in lieu of payment of the Annual ROW Underground Conduit Fee. At present, SiFi is neither deemed or classified as a Telecommunications Corporation nor does SiFi provide retail Telecommunication Services as defined by Mesa, Arizona - Code of Ordinances TITLE 9 - PUBLIC WAYS AND PROPERTY CHAPTER 14 - TELECOMMUNICATIONS SERVICE 9-14-1, however, as a condition of the rights granted under this License that permit the installation of a Communications Network in the City public Right of Way SiFi is subject to the Broadband Annual ROW Underground Conduit Fees (“ROW Fees”) when due per the City’s then-applicable Schedule of Fees and Charges.

SiFi, at its sole option, may make a direct payment of such ROW Fees or provide an in lieu payment of in-kind services equal to the amount that would be due annually. The valuation of the in-kind services (“In-Kind Services”) shall be, as follows. Assuming a total build out of 13,500,000 feet of conduit:

(i) SiFi shall install and maintain Drops for up to six hundred and seventy (670) Demand Points at City owned locations within the City Boundary with such locations to be determined by the City during the SiFi engineering design phase of the Communications Network.

(ii) City staff will provide, manage, and connect their own electronics to the Drop which is capable of receiving up to a 10 gigabit data connection.

(iii) SiFi will subsidize the offering of discounted broadband services by all internet service providers on the Communications Network to subscribing low-income households for up to thirty three thousand (33,000) such premises.

(iv) SiFi Networks Operations Center will provision up to 10 gigabit point to point circuit (a data connection between two locations for internal municipal internal use only and not public or retail purposes).

(v) City will pay SiFi for the construction Drop.

For the avoidance of doubt, if SiFi provides the In-Kind Services described above on a pro rata basis equal to the actual amount of conduit installed in the Public Highways, City agrees (i) that SiFi shall not be responsible and liable for any other or additional fees or payments to the City in connection with this Agreement or the permitting process in excess of the Monthly Reimbursable Amounts (as defined, *infra*) and the value of the In-Kind Services. Furthermore, the City agrees that this Agreement shall not require SiFi to comply with or otherwise be subject to any additional financial obligations or liabilities as a grantee of a License under the City’s municipal code, ordinances or similar laws. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 4.3 will survive expiration or termination of this Agreement.

4.4 Pass Through. The City agrees that the amount of License Fee payable by Licensee may be passed through to Licensee’s customers and their customers including the end users of services on the Communications Network.

SECTION 5. Indemnification and Assumption of Risk.

5.1 In addition to the indemnity requirements set forth in Mesa City Code Section 9-14-3(D)(4), Licensee shall indemnify and hold harmless City, its Mayor and Councilmembers, officers, agents, employees, boards, and commissions (collectively, including City, "City Indemnitees") from and against all third-party claims, demands, damages, losses and expenses of any nature (including an award of attorneys' fees) sustained by the City Indemnitees on account of any suit, judgment, execution, claim or demand whatsoever arising out of or resulting from the acts or omissions of Licensee, its customers, officers, agents, employees, contractors, successors or assigns (collectively, "Licensee and its Agents"), or the performance of work by Licensee and its Agents pursuant to this License or the installation, operation, or maintenance of the Communications Network, whether or not any act or omission complained of is authorized, allowed or prohibited by this License (each, a "Claim"), except to the extent such Claim arises due to the sole and active negligence or willful misconduct of the City 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 specified in this section, the City Indemnitees shall give reasonable, prompt notice to Licensee of such Claim. Failure of the City Indemnitees to timely give such notice to Licensee shall relieve Licensee of its indemnity obligations hereunder only to the extent Licensee is actually prejudiced or damaged by such failure. Licensee shall have reasonable control of the defense of any action or litigation of a Claim and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the City Indemnitees' consent, which consent shall not be unreasonably withheld or delayed. The City Indemnitees shall cooperate with Licensee in the defense and settlement of any Claim at Licensee's expense. No City Indemnitee 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 Licensee's written consent.

5.2 For the avoidance of doubt, Licensee's customers shall be considered third parties for purposes of Section 5.1, and the Parties acknowledge that Licensee shall indemnify City Indemnitees against any suit, judgment, execution, claim or demand whatsoever from its customers, so long as it is alleged to arise or result from the installation, operation, maintenance, repair, or condition of any facilities authorized under this Agreement including the Communications Network, the delivery of services over the Communications Network, or the condition of public or private property altered as a result of Licensee's activities.

5.3 Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona and City and Licensee are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally,

if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Licensee posts such bond; and provided further, that if the Arizona Supreme Court determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further obligations hereunder.

5.4 Licensee shall assume the risk of, and hereby relinquishes any claim of any kind whatsoever against City in connection with any final, non-appealable order or determination by a court of competent jurisdiction that City lacked the statutory authority under Arizona law to issue this License.

5.5 The Parties agree that if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order or determination that City did not have the authority to issue a License to Licensee under Arizona law, then this License shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days' notice to the other. In such an event, 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.

SECTION 6. Security Fund, Permitting, and Insurance.

6.1 Prior to applying for any permit to construct, install, maintain or perform any work under this License Agreement, Licensee shall take either one of the following actions:

6.1.1 Either Licensee shall provide City with a performance bond in the amount of one hundred thousand dollars (\$100,000) naming City as obligee and guaranteeing Licensee's faithful performance of its obligations under this Agreement, and the performance bond will remain in full force during the term of this License Agreement; or

6.1.2 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 no more than Five Hundred Thousand Dollars (\$500,000.00) per annum (the "Security Fund"), as security for the faithful performance by it of all the provisions of this License, and compliance with all permits 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 Communications Network. Licensor shall have the full power of withdrawal of funds from the Security Fund except that all interest accrued shall be payable to the Licensee on demand. No withdrawals shall be made from the Security Fund without the prior written approval of the City Engineer or

his/her designee and prior written notice of intent to withdraw to Licensee. If Licensee elects the Security Fund option, then:

6.1.2.1 No later than ten (10) business days prior to the last business day of the first anniversary and each anniversary thereafter during the Term, City will provide notice to Licensee of any amount withdrawn by the Licensor from the Security Fund pursuant to Subsection 6.1 above during the then current year, and on the first business day of the following month and on each anniversary thereafter during the Term, the Licensee shall deposit a sum of money sufficient, as specified in the respective City notice, to restore the 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.

6.1.2.2 If the Licensee fails, within ten (10) 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) 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, then 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.

6.1.2.3 The Licensee shall be entitled to the return of the 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) calendar days of notice of such a determination.

6.1.2.4 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.

6.2 Before the start of construction or repair work (other than emergency repairs) within Public Highways or other City-controlled property (where allowed by separate agreement), 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 for its review and

consideration. These plans shall be prepared and submitted in accordance with the City's process for securing a permit for utility construction in the Public Highways. At the time of construction, the Licensee or its contractor shall obtain and pay for a Right-of-Way Permit. During construction, the City will inspect and test all trenching, backfilling and other related items and if the City incurs costs not covered by the permit fees, then Licensee shall reimburse the City its actual, reasonable and documented inspection costs, including material testing.

6.3 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 Highways and that was not paid during the permit process (the "Monthly Reimbursable Amounts"). 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 Highways. City represents and warrants that such costs are and will be limited to the actual costs incurred by the City in fulfilling its obligations under the Agreement.

6.4 Insurance. General Requirements.

6.4.1 Licensee, at its own expense, shall carry and maintain insurance of the types and amounts required in this section with companies possessing a current AM Best, Inc. rating of A-- or better and legally authorized to do business in the State of Arizona with policies and forms reasonably satisfactory to City.

6.4.2 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 material breach of this Agreement and may result in termination of this Agreement.

6.4.3 The failure to renew any of the insurance policies required pursuant to this Agreement prior to their expiration shall constitute a breach of this License Agreement.

6.4.4 All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement shall name, 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.

6.4.5 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 effected shall protect both Parties and be primary coverage for any and all losses covered by the described insurance. The insurance provided by Licensee shall not require contribution from, any other insurance or self-insurance maintained by the City or the City's agents, representatives, officials, officers, or employees.

6.4.6 The insurance policies, except Workers' Compensation, 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.

6.4.7 The insurance policies may provide coverage requiring deductibles, but payment of such deductibles shall be assumed by and shall be the sole responsibility of the Licensee. Licensee may request to utilize self-insured retention to satisfy the requirements herein, which the City may approve in its sole and absolute discretion, and only upon a showing that Licensee has the financial means to provide such coverage.

6.4.8 All policies and certificates shall contain an endorsement providing that the insurer shall provide at least thirty (30) days prior written notice of cancellation, except for non-payment of premium in which a ten (10) day notice shall be given to City.

6.4.9 Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Licensee with reasonable promptness in accordance with the Licensee's information and belief.

6.4.10 In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under this Agreement, the amount of excess of such claims, or any portion thereof, may be withheld from the Security Fund.

6.5 Proof of Insurance; Certificates of Insurance.

6.5.1 Prior to commencing work or services under this Agreement, Licensee shall furnish to City Certificates of Insurance 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 and obtain from the City's Risk Management Division approval of such Certificates of Insurance.

6.5.2 If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City five (5) days prior to the expiration date.

6.5.3 All Certificates of Insurance shall identify the policies in effect on behalf of the Licensee, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the Agreement documents. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

6.5.4 City reserves the right to request and to review at a mutually agreeable location, within ten (10) working days, copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Licensee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Licensee from, or be deemed a waiver of City's right to insist on, strict fulfillment of Licensee's obligations under this Agreement.

6.6 Required Coverage.

6.6.1 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 CG00010413 or equivalent thereof including, but not limited to, severability of interest and waiver of subrogation clauses.

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

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

6.6.4 Claims involving contractual liability insurance applicable to the Licensee's obligations of indemnification.

6.7 Commercial General Liability - Minimum Coverage Limits.

6.7.1 The Commercial General Liability Insurance required herein shall be written for not less than \$5,000,000.00 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000.00 per occurrence and an aggregate of \$10,000,000.00 in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISC) Additional Insured, Form B, CG 2010, and shall include coverage for Licensee's operations and products, and completed operations.

6.8 Worker's Compensation and Employer's Liability.

6.8.1 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 \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit. In case any work is subcontracted, Licensee will require the subcontractor to provide worker's compensation and Employer's Liability to at least the same extent as required by Licensee.

6.9 Automobile Liability.

6.9.1 Licensee shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence 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 Service Office, Inc. Policy Form CA 0011293, or equivalent).

SECTION 7. Confidential Information.

7.1 Proprietary information disclosed by the Licensee means all information regarding the Communications Network, including plans, drawings, designs, conceptual renderings, cost information, specifications, photographs, reports, manuals, and other documents “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 Licensee to its customers.

7.2 Proprietary Information disclosed by 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, City shall notify Licensee of the request and allow Licensee a reasonable opportunity to defend its information from disclosure.

7.3 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.).

SECTION 8. Term and Licensee Abandonment of the Facilities.

8.1 The rights, privileges and License granted herein shall become effective upon the mutual execution of this Agreement by the Parties (the “Effective Date”) and shall continue and exist for an initial term of five (5) years from the Effective Date unless sooner revoked or canceled as provided in Section 11 below. Pursuant to the conditions of A.R.S. §9-583(G) and Mesa Code 9-14-3, so long as Licensee is not in default hereunder, this License Agreement shall automatically renew at the end of each five-year term. If Licensee elects to not renew this Agreement and within six months fails to either: i) execute another license permitting it to remain within the Public Highways, or ii) provide evidence of transfer of the Communications Network to another entity, then the system will be deemed abandoned and shall become the property of the City, unless the Licensee is negotiating with the City in good faith to execute another license or to find a mutually agreeable disposition of the Communications Network. If, at a future date, Licensee petitions for a franchise pursuant to A.R.S §9-502(F) on substantially the same terms as this Agreement (acknowledging that Licensee would desire a longer term), and if the voters approve that franchise, then Licensee shall have the right to terminate this License Agreement.

8.2 In the event the City revises the City of Mesa Engineering & Design Standards in a manner that prohibits, restricts, or materially alters the methods of construction that Licensee plans to use to construct its Communications Network, and if Licensee can show that such change materially and adversely impacts its ability to continue building its Communications Network or to complete construction of the Communications Network, then Licensee may either: (i) terminate this License and cease operations within the City; or (ii) cease construction of new portions of the Communications Network, in which case Licensee shall have no further obligation to continue construction pursuant to the timeline in Section 3.11, but may continue to operate the portion of the Communication Network completed to that point. In the event Licensee chooses to discontinue construction, but to continue operations pursuant to (ii), above, Licensee shall not reengage construction of new facilities unless and until it agrees to a new construction schedule approved in

writing by the City Manager. In order to exercise either option under this Section 8.2, Licensee shall first provide the City with at least thirty (30) days' written notice.

8.3 If the Licensee abandons use of all or any part of its Communications Network 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 remove its above ground facilities and to restore the Public Highways to a reasonable condition under the supervision of the City. Pursuant to 8.1, 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 or, with the City's concurrence, to another entity. Any such facilities which are not removed as required by the City within one hundred eighty (180) 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, then the facilities shall automatically become the property of the City. If abandoned, Licensee must notify the Arizona Blue Stake Center of such abandonment and shall record the abandonment consistent with Arizona Revised Statutes §§ 40-360.21 et seq.

SECTION 9. Transferability of License.

9.1 Assignment. Except as set forth below, neither Party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other Party, which consent shall not be unreasonably withheld, delayed, or conditioned. Any agreed upon assignee will take the place of the assigning Party, and the assigning Party will be released from all its rights, liabilities and obligations upon such assignment.

9.1.2 Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement or any or all its rights and obligations under this Agreement:

9.1.2.1 to any Affiliate (as defined below) of Licensee;

9.1.2.2 to any successor in interest of Licensee's business operations in the City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or

9.1.2.3 to any purchaser of all or substantially all of Licensee's Network Facilities in the City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement.

9.2 If Licensee assigns this Agreement to an Affiliate without first obtaining the prior written consent of City, then Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. If City provides prior written consent for an assignment to an Affiliate (which shall not be unreasonably withheld or delayed), then the assignee will take the place of the assigning Party, and the assigning Party will be released from all its rights, liabilities and obligations upon such assignment. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

SECTION 10. Nonexclusive License.

This License grant is not exclusive, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation. Nor shall the License deny or lessen the powers and privileges granted the City under the Constitution and laws of the State of Arizona; provided, however, that upon issuance of the applicable permit by the City, the area actually used by Licensee for installation of the Communications Network shall be for the exclusive use of the Communications Network during the Term, subject to the terms and conditions of this Agreement.

SECTION 11. Revocation of License.

The License granted hereunder may be revoked by the Licensor prior to expiration of the then-current Term if any one of the following events occurs:

- i. 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 as provided by Section 12;
- ii. 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, in the reasonable, good faith opinion of the City, affects Licensee's capability to perform its obligations under this License; or
- iii. the Licensee is the subject of a petition for involuntary bankruptcy not dismissed within sixty (60) days.

SECTION 12. Breach; Rights and Remedies.

12.1 Licensee Breach or Default. In the event the City believes that Licensee has not complied with or is otherwise in default of any material term of this Agreement, the City shall promptly notify Licensee in writing with specific details regarding the exact nature of the alleged noncompliance or default (a “City Breach Notice”). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of City hereunder unless and only to the extent that the Licensee is materially prejudiced by such failure.

12.1.1 Licensee’s Right to Cure or Respond. Licensee shall have forty-five (45) days from its receipt of a City Breach Notice (the “Initial Licensee Cure Period”) to either:

- i. respond to the City, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest, but in the event the Parties are unable to resolve such contest within thirty (30) days of Licensee’s response, City may proceed to enforce any of the remedies set forth in Section 12.1.2 ; or
- ii. cure the actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the Initial Licensee Cure Period, then so long as Licensee initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies the City of the steps being taken and the projected date that they will be completed, the Initial Licensee Cure Period shall be extended for a reasonable amount of time to permit such cure but not to exceed ninety (90) days from Licensee’s receipt of a City Breach Notice (the “Extended Licensee Cure Period” and together with the Initial Licensee Cure Period, the “Licensee Cure Period”). If Licensee is unable to cure the default during the Initial Licensee Cure Period or Extended Licensee Cure Period (whichever is applicable), then City may proceed to enforce any of the remedies set forth in Section 13.1.2.

12.1.2 City Rights and Remedies.

- i. If Licensee fails to cure any actual noncompliance or default as provided in Section 12.1.1 within the applicable Cure Period, the City may take any or all of the following actions:
 - a. terminate this License;
 - b. seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Licensee to undertake and to fully and timely address or to enjoin any

construction or activity undertaken by Licensee which is not in accordance with the terms of this Agreement;

- c. seek indemnity (including but not limited to filing an action for damages) arising under Licensees indemnity or duty to hold harmless obligations set forth in Section 5, or seek damages for failure to restore property under Sections 3.3, 3.6, or 8.3; or
 - d. enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Licensee or City pursuant to this Agreement.
- ii. Notwithstanding anything to the contrary in this Agreement, in no event shall the City be permitted to terminate this Agreement if the City has an uncured breach or default under this Agreement.

12.2 City Breach or Default. In the event Licensee believes that the City has not complied with or is otherwise in default of any material term of this License, Licensee shall promptly notify the City in writing with specific details regarding the exact nature of the alleged noncompliance or default (a “Licensee Breach Notice”). The failure to promptly provide such notice, however, shall not act as a waiver of any rights and remedies of Licensee hereunder unless and only to the extent that the City is materially prejudiced by such failure.

12.2.1 City’s Right to Cure or Respond. The City shall have forty-five (45) days from its receipt of a Licensee Breach Notice (the “City Cure Period”) to either:

- i. respond to Licensee, contesting the assertion of noncompliance or default and in such event the Parties shall use commercially reasonable efforts to promptly resolve such contest, but in the event the Parties are unable to resolve such contest within thirty (30) days of City’s response, Licensee may proceed to enforce any of the remedies set forth in Section 12.2.1; or
- ii. cure the actual default or noncompliance; provided, however, in the event that the default is curable but due to the nature of the default or noncompliance, such default or noncompliance cannot be cured within the City Cure Period, then so long as City initiates reasonable steps to remedy and continuously and diligently uses all reasonable efforts to cure such default or noncompliance promptly and notifies the Licensee of the steps being taken and the projected date that they will be completed, the City Cure Period shall be extended for a reasonable amount of time to permit such cure but not to exceed ninety (90) days from City’s receipt of a Licensee Breach Notice (the “Extended City Cure Period”). If City is unable to cure the default during the City Cure Period or Extended Licensee Cure

Period (whichever is applicable), then Licensee may proceed to enforce any of the remedies set forth in Section 12.2.2.

12.2.2 Licensee Rights and Remedies. If the City fails to cure any actual noncompliance or default as provided in Section 12.2.1 within the applicable Cure Period, Licensee's sole and exclusive remedies shall be limited to any or all of the following, as applicable:

- (i) file a special action or seek other similar relief (whether characterized as mandamus, injunction or otherwise), requiring City to undertake and to fully and timely perform its obligation under this Agreement;
- (ii) an action for damages for repairs to its Communications Network as set forth in Section 3.5 if applicable; and
- (iii) in the event of the breach of, noncompliance with or default under any material term of this Agreement, terminate this Agreement and seek recovery of termination-related, market-based attorneys' fees.

12.2.3 Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City. Notwithstanding anything to the contrary in this Agreement, in no event shall the Licensee be permitted to terminate this Agreement if the Licensee has an uncured breach or default under this Agreement.

12.3 Limitation of Liabilities:

12.3.1 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 Communications Network or the provision of services, or for any damages arising out of Licensee's use of the Public Highways.

13.3.2 Except where explicitly permitted by the terms of this License Agreement, City and Licensee each waives its respective right to seek and recover consequential (including lost profits or harm to business), indirect, incidental, reliance, exemplary, special, beneficial, numerical, punitive or similar damages from the other.

SECTION 13. Acceptance of License Terms and Conditions.

13.1 This License shall not become effective until after approval by the City Council, execution by the City Manager, and Licensee's written acceptance thereof shall have been filed with the City Clerk of the City. By entering into this License, the Licensee covenants and agrees

to perform and be bound by each and all terms and conditions imposed by the City Charter, Code of the City, and this License.

13.2 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.

13.3 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.

13.4 In the event of conflict between the terms and conditions of the License and the authority under which the City can grant a license or permission to use the streets and public ways as set forth in applicable law, the applicable law shall control.

13.5 Nothing in this License shall be deemed to waive the requirement of the various codes, ordinances and regulations of the City.

13.6 The Licensee shall have no recourse whatsoever against the City's officers, elected or appointed officials, boards, commissions, agents or employees for any loss, cost, expense, or damage arising out of any actions taken in their official capacities pursuant to this Agreement.

SECTION 14. Partial Invalidity.

14.1 If any section, paragraph, clause, phrase or provision of this License Agreement shall be adjudged invalid or unconstitutional, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, 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 superseded or adjudged to be invalid or unconstitutional.

14.2 The Parties agree that this License is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, order and ordinances. Accordingly, any provision of this License which conflicts with any such applicable law 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 all applicable laws; and (ii) that the execution of this License does not constitute a waiver of any rights or obligations by either party under any applicable law. 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 15. Notices.

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 sent through an overnight delivery service in circumstances to which such service guarantees next day delivery, the day following being so sent; or (iv) if sent via e-mail, at the time sent:

If to the City:

City of Mesa
Right of Way Manager
P.O. Box 1466
Mesa, AZ 85211-1466
Email: lori.greco@mesaaz.gov

With a copy to:

Mesa City Attorney
20 E. Main Street
Mesa, AZ 85201
Email: Attorney.info@mesaaz.gov

If to Licensee:

SiFi Networks Mesa LLC
103 Foulk Road, Suite 500
Wilmington, DE 19803
Attn: Legal
Email: NOTICES@SiFinetworks.com

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 16. Entire Agreement and Amendment.

This License 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 License Agreement as necessary to comply with applicable laws and regulations. In the event that an amendment in this License 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 License Agreement to effect such compliance. This License Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

SECTION 17. Governing Law: Arizona Legal Requirements.

This License will be governed by, enforced and construed in accordance with the laws of the State of Arizona and applicable federal law and any Party bringing a claim hereunder may bring such claim only in the Superior Court of Maricopa County, Arizona or the United States District Court

for the District of Arizona, as applicable. The Parties hereby irrevocably designate these courts as the only courts 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 and the United States District Court for the District of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this License Agreement shall be Maricopa County, Arizona. The Parties acknowledge the following Arizona statutes applicable to this Agreement and any terms required to be in this Agreement based on such statutes are deemed included herein: A.R.S. § 38-511 (cancellation of political subdivision contracts); A.R.S. § 42-17106 (expenditures limited to budgeted purposes); A.R.S. § 35-393.01 (Israel boycott divestments); and A.R.S. § 38-504 (conflict of interest – prohibited acts).

SECTION 18. Attorneys' Fees.

The prevailing Party in any litigation arising out of this License 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. Force Majeure.

Except as otherwise expressly set forth in this License, the Parties will not be held in default under, or in breach or noncompliance with, the provisions of this License, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Agreement), where such noncompliance or alleged defaults occurred or were caused by any of the following events (each a “Force Majeure Event”): labor strike, riot, war, earthquake, flood, hurricane, health crisis, pandemic, drought, tornado, unusually severe weather conditions, or other act of nature, labor disputes, failure of utility service necessary to construct the Communications Network, governmental, administrative or judicial order, or other event that is beyond the Parties’ reasonable control. Force Majeure Events also include work delays caused by waiting for (i) utility providers to service or monitor their own utility infrastructure on which Licensee’s fiber optic cable and/or equipment may be deployed, as well as unavailability of materials and/or reasonably qualified labor to perform the work or (ii) third parties’ acts or omissions within the Public Highway which materially interfere with the Parties’ ability to perform its obligations under this Agreement.

SECTION 20. Preservation of State Shared Revenues.

Notwithstanding any other provision of, or limitation in, this License Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Arizona Attorney General determines that this License Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 et seq.), City and Licensee shall use all and best faith efforts to modify the License Agreement so as to fulfill each Parties’ obligations in the License Agreement while resolving the violation with the Arizona Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), City and

the Licensee cannot agree to modify this License Agreement so as to resolve the violation with the Attorney General, this License Agreement shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this License Agreement. Additionally, if the Arizona Attorney General determines that this License Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this License Agreement, except if Licensee posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this License Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this License Agreement and the Parties shall have no further rights, interests, or obligations in this License Agreement or claim against the other Party for a breach or default under this License Agreement.

SECTION 21. Representations and Warranties.

21.1 Subject to the limitations set forth in Sections 13 and 21, the City represents and warrants to Licensee that, as of the date of the execution of this License Agreement, to the best of its knowledge: (a) it has full authority (including the authority required by any applicable law, ordinance, rule or regulation) to enter into and perform this License Agreement and the execution, delivery and performance of this License Agreement and the consummation of the transactions contemplated hereby and thereby are within the right, power and authority of the City and have been duly authorized by all necessary action on the part of City, (b) this License Agreement has been duly executed and delivered by the City and it constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity) and (c) the execution and delivery of this License Agreement by the City and its performance hereunder and thereunder does not violate any law, ordinance, rule, or regulation applicable to the City.

21.2 Licensee represents and warrants to the City that: (a) it has full authority to enter into and perform this Agreement and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby are within the power and authority of Licensee and have been duly authorized by all necessary action on the part of Licensee, (b) this Agreement has been duly executed and delivered by Licensee and it constitutes a legal, valid and binding agreement of Licensee enforceable against Licensee in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity) and (c) the execution and delivery of this Agreement by Licensee and its performance hereunder and thereunder will not violate any law, rule, or regulation applicable to Licensee.

21.3 OTHER THAN THE EXPLICIT REPRESENTATIONS AND WARRANTIES MADE BY LICENSEE TO CITY UNDER THIS AGREEMENT, LICENSEE MAKES NO REPRESENTATIONS OR WARRANTIES TO THE CITY OR ANY PERSON WITH RESPECT TO THE COMMUNICATIONS NETWORK (OR THE COMPONENTS THEREOF) AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY

WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT LICENSEE MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

SECTION 22. No Waiver.

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 23. No Third-Party Beneficiaries.

This License Agreement 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 License Agreement.

SECTION 24. No Rights to the Communications Network.

The City expressly agrees that, except as expressly set forth in this License Agreement, it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Communications Network, throughout the term of this License Agreement. Licensee shall, at all times, retain title to and ownership of the Communications Network and all future extensions of the Communications Network, and shall have the right to lease the Communications Network or parts thereof to providers of internet, data, voice, video and other services.

SECTION 25. Construction.

Each of the Parties acknowledge that each Party to this License Agreement has been represented by counsel in connection with this Agreement. Legal or equitable principles that might require the construction of this Agreement or any provision hereof against the Party drafting this Agreement shall not apply in any construction or interpretation of this Agreement and is expressly waived. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

SECTION 26. Waiver.

No provision of this Agreement may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial

exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

SECTION 27. Survival.

The rights and obligations of the Parties under Sections 5, 6, 7, 18, 22 and any other obligations which reasonably should survive expiration or other termination or completion of this License 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 any Party prior to the expiration of three (3) years following any termination, expiration or completion of this Agreement, the provisions of this License Agreement that are the subject of such action shall survive until any settlement, judgment or order resulting from such action is fully satisfied.

SECTION 28. Severability.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement (which other terms and provisions shall remain in full force and effect) or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

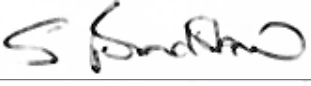
SECTION 29. Counterparts.

This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures were upon the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (including PDF) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(Signature Page Follows)

This License executed this ____ day of July, 2022 (The "License Date").

LICENSEE: SIFI NETWORKS MESA LLC

By: 

Name: Scott Bradshaw


Its: Authorized Signatory

Date: JUNE 30, 2022

THE STATE OF NEW JERSEY

COUNTY OF MORRIS

On JUNE 30, 2022 before me, Chandrakant, Notary Public
in and for said county, personally appeared SCOTT BRADSHAW
(signer/witness) who has/have satisfactorily identified him/her/themselves as the signer(s) or
witness(es) to the above-referenced document.



Notary Public Signature

Print CHANDRAKANT PATEL
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 17, 2026
ID # 2339173

My commission expires: _____

(Seal)

CITY: CITY OF MESA, a municipal corporation

By: _____
City Manager

Date: _____

STATE OF ARIZONA)
)SS
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, _____, City Manager of CITY OF MESA, a municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:
