

LICENSE AGREEMENT

This License, is issued by the City of Mesa (hereinafter called "Licensor" or "City"), an Arizona municipal corporation, to Gila Local Exchange Carrier, Inc. DBA Alluvion Communications (hereinafter called "Licensee").

A. WHEREAS, Licensee has applied to the City for a License for the installation, placement, operation and maintenance of an underground optical fiber-based communications network in, on, under, upon, along and across certain "public highways" (as that term is defined in A.R.S. § 9-581) within the City;

B. WHEREAS, Licensee intends to utilize its facilities to provide intrastate, interstate and lit services, and Licensee has obtained a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("ACC");

C. 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

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

E. 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 follows:

SECTION 1. License Granted.

1.1 There is granted to Licensee a revocable and nonexclusive License to construct, repair, maintain, replace, operate, lease, install, remove, and upgrade, in, on, under, upon, along and across the Public Highways in the City up to four inch diameter conduit pathway. The location of the conduit pathway is specifically identified in the map attached as Exhibit A. The conduit pathway consists of a fiber optics communications network, facilities, conduit, innerduct, fiber optic cables, manholes and hand holes, vaults and appurtenances necessary for use and operation of the system (collectively the "Communications Network"), subject to the applicable provisions of this license, the City Charter, City Code, and any future amendments to the City Charter or City Code, together with all applicable laws and reasonable regulations of any regulatory agency having competent jurisdiction (the "License"). The terms, phrases, words and their derivatives shall have the meaning defined in Title 9, Chapter 14, Sections 1-3 of the Mesa City Code as amended from time to time.

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

1.1.2 Multichannel Video System includes:

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

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

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

SECTION 2. Conditions. Indemnity. Fees and Charges.

2.1 The Communications Network constructed, installed, operated, leased, repaired, replaced, removed, abandoned and/or maintained pursuant to this License shall be constructed,

installed, operated, leased, repaired, replaced and/or maintained in accordance with all applicable codes, regulations, policies, and standards without limitation to City, State of Arizona and any other governmental entity requirements with jurisdiction within Public Highways. 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 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, reasonable, and necessary to ensure compliance with the terms and conditions of this License. All work performed under this License 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 OSHA regulations. Licensee shall retain an independent testing company, approved by City in its reasonable discretion, to test all materials that will be used in construction, and which are subject to materials testing pursuant MAG and the City amendments to MAG.

2.2 The Communications Network to be constructed, installed, operated, leased and repaired, replaced and/or maintained, upgraded and removed under this License, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within Public Highways. Those phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of the Communications Network shall be subject to the reasonable regulation by the City Engineer or designee and the permitting process of the City.

2.2.1 Licensee shall submit 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 is generally depicted on Exhibit A and 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 of the Communications Network, including any related facilities or equipment, from that set forth in the initial Right-of Way Permit or Right-of-Way Encroachment Application(s), Licensee shall apply for a new permit prior to any relocation or construction. Such permits referred to in this Section 2.2.1 shall be identified by City log number and made a part hereof and referenced as a summary of its Communications Network location as Exhibit A and updated yearly.

2.2.2 Although the exact placement and location of Licensee's Communications Network shall be determined by City through the permit process, Licensee has expressed its intent

and City has expressed its desire to have the Communications Network installed outside of the paved street areas whenever such location is feasible and reasonable. Further, it is the intent and desire of both Parties that when it is necessary for the Communications Network to intersect City streets or be placed under paved areas, Licensee shall use directional boring under such streets when feasible and reasonable. Except where specifically authorized by the City Engineer or designee, all portions of the Communications Network shall be installed below grade. No attachment to existing infrastructure is allowed if attachment will require aerial overlanding.

2.3 If Licensee damages or disturbs the surface or subsurface of any public highway or adjoining public property or any public improvement, Licensee shall promptly, at its own expense, and in a manner reasonably acceptable to City, repair the damage or disturbance. 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 City, then City may perform such repair and Licensee shall pay all the actual, reasonable, and fully documented direct costs expended in such repair of such City facility. It is hereby acknowledged that City policy requires that severed City-owned fiber must be completely replaced to nearest previously existing splice point.

2.4 In the event of a public emergency, City shall have the right to sever, disrupt, or dig-up facilities of Licensee, after all reasonable efforts have been made, given the constraints of such public emergency, (i) to contact Licensee prior to any such action; and (ii) to reasonably avoid severing, disrupting or digging up the facilities of Licensee. City shall, where reasonable, work with Licensee in responding to the emergency.

2.5 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 thirty calendar days' notice before any required action of Licensee to relocate affected portions of the Communications Network and shall cooperate with Licensee to identify replacement and alternative Public Highways for the relocation of affected portions of the Communications Network. Promptly after service of notice by the City, City and Licensee shall cooperate to agree upon a removal schedule and alternative Public Highways for relocation of the affected portions of the Communications Network. Licensee shall promptly remove the designated portions of the Communications Network, and if requested by City, Licensee, at its sole cost and expense, will restore the sidewalks and other Public Highways 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 every reasonable effort to design and construct projects pursuant to this section so as to minimize relocation expenses to Licensee. The City will not exercise its right to require the Licensee's Communications Network to be relocated in an unreasonable or arbitrary manner. Except for reasons beyond Licensee's reasonable control, if Licensee fails to relocate as required herein, the

Licensee shall reimburse City for actual and reasonable, direct damages incurred by City as a result of such delays.

2.6 The License granted is for Licensee only. Transfer of the License or any interest therein or control of the Communications Network is subject to the provisions of Section 7 (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.

2.6.1 This License Agreement authorizes Licensee, in its ordinary course of business (i) to lease to or contract with others for use of all or part of the Communications Network as distinguished from selling services carried on the Communications Network and (ii) to lease dark fiber or conduit that are part of the Communications Network to others that have contract, franchises or other agreements with City to use its public property within the City, without further prior consent of City, but only on the following conditions:

(A) Licensee shall first provide written notice to City of the identity of the proposed lessee and the proposed use or arrangement;

(B) In the event the lease or contract provides for the other entity to construct, install, operate or maintain any of Licensee's Communications Network, no such arrangement shall proceed until the other entity enters into an agreement with the City for use of the City's Public Highways; and

(C) Licensee's installation of the Communications Network shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along with Licensee's project as set forth in this Agreement. All installations shall be in conduit or innerduct as reasonably approved by the City Engineer or her designee.

2.7 In addition to the indemnity requirements set forth in the Mesa City Code at Section 9-14-3(D)(4), the Licensee shall indemnify and hold harmless City, its Mayor and Councilmembers, officers, agents, employees, boards, and commissions ("Indemnitees") from and against all claims, damages, losses and expenses of any nature, including reasonable attorneys' fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of or resulting from the acts or omissions of Licensee, its officers, agents, employees, contractors, successors or assigns or the performance of work by Licensee and its agents, employees and contractors pursuant to this License or the installation, operation or maintenance of the Communications Network authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this License, except to the extent such act or omission constitutes the sole negligence or willful misconduct of the Indemnitees. The amount and type of insurance coverage requirements set forth in this License will not be construed as limiting the scope of the indemnity stated in this section. In the event of any claim, demand or litigation specified in this section, the Indemnitee(s) shall give reasonable, prompt notice to Licensee of such claim, demand or litigation. Failure of the Indemnitee(s) to timely give such notice to Licensee shall relieve Licensee of its indemnity obligations hereunder to the extent it is prejudiced or damaged by such failure, Licensee shall have reasonable control of the defense of

any action or litigation on such a claim or demand and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the Indemnitee(s)'s consent, which consent shall not be unreasonably withheld or delayed. The Indemnitee(s) shall cooperate with Licensee in the defense and/or settlement of any claim, demand or litigation at Licensee's expense. Nothing herein shall be deemed to prevent the Indemnitee(s) from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnitee(s)'s own counsel at the Indemnitee(s)'s own expense. No 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.

2.8 Licensee hereby agrees to indemnify the Indemnitees from and against all cost, damages and expenses incurred by the Indemnitees in the defense of any litigation brought by third parties challenging the right of City to issue this License to Licensee under Arizona state law. In the event that any such litigation ensues, City may, but is not required to, tender the defense of such litigation to Licensee, which shall then defend the litigation; provided, however, that if City tenders such defense to Licensee, Licensee shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Licensee (and, where such terms obligate or affect City, reasonably acceptable to City), or, at any time of its election, to terminate its License under the termination terms provided in the License and withdraw from any such litigation. In the event that any such litigation ensues, City shall be reimbursed for all litigation costs incurred in defending any such action, including, but not limited to, costs of depositions, expert witnesses, exhibits and reasonable attorneys' fees and costs.

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

2.10 The Licensee and Licensor agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order 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. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council under Title 9 of the Mesa City Code to issue a revocable permit and the power to revoke as provided herein

2.11 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, 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, except those actions or requirements which have been found to be unlawful under state or federal law. Neither the granting of any License nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of City.

2.12 Licensee shall pay all lawful compensation and taxes required by the Mesa City Code, including without limitation, all required application and permit fees, and the applicable fees under the City's Schedule of Fees and Charges.

2.13 Attached hereto as Exhibit A is a map illustrating the location of Licensee's Communications Network. Licensee warrants that its Communications System shall be dedicated to the provision of "Telecommunications services," as that term is defined in Arizona Revised Statutes, § 9-581 and Mesa City Code, §9-14-1. If at any time Licensee cannot make such a warrant for any portion of Licensee's Communications Network, then that portion shall be subject to the annual per foot linear fee ("Per Foot Fee") set forth herein. The current Per Foot Fee is \$1.89. Licensee agrees that on each annual anniversary of this License that the Per Foot Fee will be adjusted by the change to the annual average CPI set forth in Arizona Revised Statutes §9-583, which is also identified in the City of Mesa Engineering Department's Schedule of Fees and Charges.

2.13.1 Payment of the annual Per Foot Fee owed by Licensee to City shall be made in United States legal tender. Payments shall be considered timely if postmarked on or before the due date. The "Due Date" shall be on the execution of this License Agreement and on or before the first anniversary of the License Date, as defined below, each year thereafter. If License fees are not paid by the Due Date, interest of 1.0% per month shall accrue on the entire amount due. Any payment received shall first be applied to any interest charges owed, and then to any License fee owed.

2.13.2 As noted in Section 2.13 above, the annual Per Foot Fee shall be adjusted based on the percentage of change in the CPI for the previous License year. Any increase in fees will be referred to herein as the Adjusted Fees ("Adjusted Fees"). In no event shall the Adjusted Fees be less than the fees indicated in Paragraph 2.13.

2.14 INTENTIONALLY OMITTED

2.15 If the FCC, Federal or State government, or the courts, in the future, permit City to receive additional or different compensation for the use of the Public Highways to provide telecommunications services, City and Licensee shall negotiate in good faith a mutually agreeable amendment to this License to include this compensation.

2.16 Any privilege claimed under this License by Licensee in any public street or other public property 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.

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

before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

2.18 Licensee shall maintain As-Built Drawings of its facilities and abandoned facilities located within the Public Highways, furnish a copy both (1) electronically, as requested by the City; and (2) in hard copy 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. Upon completion of new or relocation construction of underground facilities in the Public Highways, public streets and public utility easements. Licensee shall provide City with installation records in an electronic format compatible with the then current City electronic mapping format showing the location of the underground facilities. The Licensee shall comply with Arizona Revised Statutes §§ 40-360.21 et seq. by participating as a member of the Arizona Blue Stake Center (or other appropriate organization selected by the City) with the necessary records and persons to provide the location and identity of Licensee's underground facilities upon receipt of a locate call or as promptly thereafter as possible, but in no event later than two (2) working days after receipt of a locate call. A copy of their agreement or proof of membership shall be submitted to the City upon request.

2.19 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 System. 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 of any changes immediately.

2.20 City may confirm Licensee's compliance with the terms of this License Agreement, and State and local tax laws by requesting the opportunity to inspect records of the Licensee. In order for the Licensor to determine Licensee's compliance with the terms of this License, within ten (10) days of notice by Licensor of a request for disclosure, the Licensee shall provide relevant documentation as requested by Licensor including, but not limited to, regular reports as needed to establish Licensee's compliance with the various requirements and other provisions of this Agreement. Such information may include proof of Licensee's documentation of the services Licensee is offering its customers. Except where required by State or local tax laws, Licensee may redact the identities of its customers from any such documents. Upon request Licensee shall provide to City copies of any communications and reports submitted by Licensee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this License Agreement. If Licensee determines that in order to respond to Licensor's request for documentation and inspection that it must reasonably provide proprietary information, the Licensee shall so designate such claim to proprietary treatment on documents provided to Licensor.

2.21 Proprietary information disclosed by the Licensee means any document or material clearly identified as confidential ("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.

2.22 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.

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

2.24 The parties agree that this License is intended to satisfy the requirements of the applicable laws, administrative guidelines, rules, order and ordinances (collectively referred to as the "Applicable Law"). Accordingly, any provision of this License which conflicts with the 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 the Applicable Law; and (ii) that the execution of this License does not constitute a waiver of any rights or obligations by either party under the 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 3. Performance Bond; Security Fund; Permitting, and Insurance.

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

3.2 Prior to applying for any permit to construct, install, maintain or perform any work in the Public Highways which requires a construction permit from the City pursuant to applicable City Codes, the Licensee shall deposit into a suitable interest-bearing account, established by the Licensor, and the Licensee shall maintain on deposit through the term of this License, the sum of not less than Fifty Thousand Dollars (\$50,000.00) ("security fund"), as security for the faithful performance by it of all the provisions of this License, and compliance with all orders, permits and directions of any agency of the Licensor having jurisdiction over its acts or defaults under the License issued pursuant thereto, and the payment by the Licensee of any claims, liens and taxes due the Licensor which arise by reason of the construction, operation or maintenance of the facilities. Licensor shall have the full power of withdrawal of funds from the account except that

all interest accrued shall be payable to the Licensee on demand. No withdrawals shall be made from the security fund account without the prior written approval of the City Engineer or his/her designee and prior written notice of intent to withdraw to Licensee.

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

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

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

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

3.7 Any trimming of trees by the Licensee in the Public Highways shall be subject to such regulation as the City Engineer or designee may establish to protect the public health, safety and convenience.

3.8 Before the start of construction or repair work (other than emergency repairs) within Public Highways or other City-controlled property, plans showing the proposed location of facilities to be constructed in relation to the location of other known adjacent conduit and facilities, shall be submitted to the City for its review and consideration. These plans shall be prepared and submitted in accordance with the Mesa's permit process for securing a permit for utility construction in the Public Highways. At the time of construction, the constructor 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 Licensee shall reimburse the City its actual, reasonable and documented inspection costs, including material testing.

3.9 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 was not paid during the permit process. 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.

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

3.11 Insurance. General Requirements.

3.11.1 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 B++6, or better and legally authorized to do business in the State of Arizona with policies and forms reasonably satisfactory to City.

3.11.2 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.

3.11.3 If any of the insurance policies are not renewed prior to expiration, then the City may initiate revocation of this License pursuant to Section 9.

3.11.4 All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, 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.

3.11.5 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.

3.11.6 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.

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

Certificate of Insurance. Deductibles and self-insured retentions of up to \$1,000,000.00 (One Million Dollars) shall be acceptable.

3.11.8 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 apply be given to City.

3.11.9 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.

3.11.10 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.

3.12 Proof of Insurance-Certificates of Insurance.

3.12.1 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.

3.12.2 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.

3.12.3 All Certificates of Insurance shall identify the policies in effect on behalf 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.

3.12.4 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.

3.13 Required Coverage.

3.13.1 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.

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

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

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

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

3.14 Commercial General Liability - Minimum Coverage Limits.

3.14.1 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 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.

3.15 Worker's Compensation and Employer's Liability.

3.15.1 Licensee shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1 Million for each accident, \$1 Million disease coverage for each employee, and \$1 Million disease policy limit. In case any work is subcontracted, Licensee's will require the Sub-Licensee to provide worker's compensation and Employer's Liability to at least the same extent as required by Licensee.

3.16 Automobile Liability.

3.16.1 Licensee shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1 Million each 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 any replacements thereof). Such insurance shall include coverage for loading and offloading hazards if hazardous substances, materials or wastes are to be transported and a MSC 90 endorsement shall be included with coverage limits of \$5 Million per accident for bodily injury and property damage.

SECTION 4. Installation of Communications Network.

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

4.2 The Licensee's installation of the Communications Network shall be reasonably coordinated with other utilities to accommodate opportunities for common trench installation along with other utility undergrounding. All installations shall be in conduit or innerduct as reasonably approved by the City Engineer or their designee.

4.3 Licensee intends to construct infrastructure for use in providing services to various customers including telecommunications companies, businesses, entities and/or individuals. The Communications Network shall be installed in multiple phases as agreed upon by Licensee and the City. This project will take place on public streets in City, and it is the intent of the parties that Licensee and City will work to minimize the inconvenience to the citizens of City and others who use the streets impacted by the project by developing segments of the project to be completed in sequence. The sequencing shall be developed and implemented to complete portions of the Communications Network in sequence and to complete each phase of the project before beginning work on the next phase of the project. Licensee will minimize left turn restrictions to one week maximum only if there is no alternative option per location. Additionally, full intersection closures will not be authorized. Licensee will work with the Right of Way Manager to determine construction phasing.

SECTION 5. Operation of the Facilities.

5.1 The authority granted by this License to use the Public Highways does not authorize Licensee's use of the facilities for operating a cable television system, a cable system or authorize the Licensee to operate as a cable operator as those terms are defined in the Communications Act of 1934 as amended, state law, or the City Code. The authority granted by this License does not authorize the use of the Public Highways for open video systems as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the City may require to occupy the highways to provide service other than Communications Network services. The Licensee agrees that if Licensee leases to others the Communications Network facilities for Telecommunications Services or Interstate Telecommunications Services pursuant to and as defined by A.R.S. §§9-561 through 9-566, 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, an Interstate Telecommunications Services license or any other license that may be required by the City.

5.2 Licensee agrees and will take all reasonable actions to inform the City and the lessee or contracting party 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 of the City.

SECTION 6. Licensee Abandonment of the Facilities. Term.

6.1 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 facilities and to restore the Public Highways to a reasonable condition under the supervision of the City. 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 Telecommunications services provider. Any such facilities which are not removed as required by the City within one hundred twenty (120) days of either such date of termination or revocation of this License or the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. The Arizona Blue Stake Center must be notified to record facilities abandoned.

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

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

SECTION 7. Transferability of License.

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

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

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

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

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

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

- A. The proposed transferee has read, accepts and agrees to be bound by the License;
- B. The proposed transferee assumes all obligations, liabilities and responsibilities under the License for the acts and omissions of Licensee, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which Licensee could not have exercised; and
- C. The transfer will not substantially diminish the financial resources available to the Licensee.

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

SECTION 8. Nonexclusive License.

8.1 This 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, or to deny or lessen the powers and privileges granted the City under the Constitution and laws of the State of Arizona.

SECTION 9. Revocation of License.

9.1 The License granted hereunder may be revoked prior to its date of expiration by the Licensor if any one of the following events occurs:

- A. The Licensee fails to comply with the material terms and conditions of the License or applicable law and does not remedy or cure such failure to comply within sixty (60) days after its receipt of written notice thereof from City;
- B. The Licensee is or becomes insolvent or is a party to a voluntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of Licensee as a going concern, or if there is any similar action that affects Contractor's capability to perform its obligations under this License; and
- C. The Licensee is the subject of a petition for involuntary bankruptcy not dismissed within sixty (60) days.

SECTION 10. Acceptance of License Terms and Conditions.

10.1 This License shall not become effective until written acceptance thereof shall have been filed by Licensee with the City Clerk of the City. By accepting this License, the Licensee covenants and agrees to perform and be bound by each and all terms and conditions imposed by the Charter and Code of the City and License.

10.2 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.

10.3 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.

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

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

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

SECTION 11. Records.

11.1 The City may inspect all of Licensee's books and records directly related to Licensee's compliance with the requirements of this License at Licensee's offices at any time during regular business hours upon ten (10) days' prior written notice, so long as such inspection is conducted in such a way as to minimize any disruption to Licensee's business operations.

SECTION 12. Partial Invalidity.

12.1 If any section, paragraph, subdivision, clause, phrase or provision of this License shall be adjudged invalid or unconstitutional, 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.

SECTION 13. Condemnation by City.

13.1 The City reserves the right to acquire all of the Communications Network of Licensee used in the conduct of this License by the exercise of the right of eminent domain in accordance with the conditions set forth in the Arizona Revised Statutes.

SECTION 14. Notices.

14.1 All notices, requests, demands, claims and other communications permitted or required to be given pursuant to this License must be in writing and shall be deemed duly given and received (i) if personally delivered, when so delivered; (ii) if mailed, three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below; or (iii) if sent through an overnight delivery service in circumstances to which such service guarantees next day delivery, the day following being so sent:

If to the City:

City of Mesa
Right of Way Manager
P.O. Box 1466
Mesa, AZ 85211-1466

With a copy to:

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

If to Licensee:

Gila Local Exchange Carrier, Inc. DBA Alluvion Communications
Attn: David Ackerman (Alluvion General Manager)
7065 W Allison Road
Chandler, AZ 85226

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

SECTION 15. Recitals.

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

SECTION 16. Entire Agreement and Amendment.

16.1 This 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.

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. 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. Notice is hereby given of the applicability of A.R.S. § 38-511.

SECTION 18. Attorneys' Fees.

18.1 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. Liability Limitation.

19.1 The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operation of Licensee's Communications System or the provision of services, or for any damages arising out of a Licensee's use of the Public Highways.

SECTION 20. No Waiver.

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

SECTION 21. No Third Party Beneficiaries.

21.1 This License is intended to be for the sole benefit of City and Licensee and there shall be no third-party beneficiaries of this License or any provisions hereof. Nothing in this Agreement shall confer on any person or entity, other than City and Licensee, any rights, benefits or remedies under or by reason of this License Agreement.

SECTION 22. Remedies Not Exclusive.

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

SECTION 23. Survival.

23.1 The rights and obligations of the Parties under Sections 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22 and this Section 23, 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.

This License executed this _____ day of _____, 2021 (The "License Date").

LICENSEE: Gila Local Exchange Carrier, Inc. DBA Alluvion Communications

By: David A Ackerman

Its: General Manager

Date: 2/17/21

Address: 7065 W. Allison Rd.
Chandler AZ 85226

STATE OF Arizona)
)SS
County of Maricopa)

The foregoing instrument was acknowledged before me this 17 day of February, 2021, by David Ackerman, as General Manager of, on behalf of the corporation.



Jennifer Lea Burkhalter
Notary Public

My Commission Expires:

04/14/2023

CITY: CITY OF MESA, a municipal corporation

By: _____
City Engineer

Date: _____

STATE OF ARIZONA)
)SS
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, _____, City Engineer of CITY OF MESA, a municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:
