

**WIRED TELECOMMUNICATIONS LICENSE AND
RIGHT-OF-WAY USE AGREEMENT**

This Wired Telecommunications License and Right-of-Way Use Agreement (“License”) is entered into this ____ day of _____, 2020 by and between the City of El Mirage, an Arizona municipal corporation (“City”) and Crown Castle Fiber LLC, a New York Limited Liability Company (“Licensee”).

RECITALS

WHEREAS, City owns public street and alley right-of-way and public utility easements within the boundaries of the City of El Mirage;

WHEREAS, Licensee has obtained from the Arizona Corporation Commission (“ACC”) a Certificate of Convenience and Necessity (“CC&N”) Decision No. 77074, dated January 8, 2019 (the “Certificate”);

WHEREAS, Licensee desires the ability to install, operate, maintain and repair cable containing bundles of multiple optical fibers, within the right-of-way for the purpose of providing telecommunication services, as authorized by the Arizona Corporation Commission, subject to the requirements of this License;

WHEREAS, City is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation, repair, and maintenance of telecommunication facilities within the City’s boundaries pursuant to the El Mirage City Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to, A.R.S. §§ 9-581, 9-582, and 9-583), by the City’s police powers, its authority over City’s public right-of-way, and its other governmental powers and authority;

WHEREAS, City desires to reserve rights to construct, use, and allow others to construct and use all manner of additional improvements in the right-of-way, while granting Licensee a License to install, operate, maintain and repair Fiber Optic Cable within the City’s right-of-way;

WHEREAS, Licensee agrees to provide and maintain accurate maps showing the location of all Fiber Optic Cable owned or used by Licensee in the City right-of-way, and to comply with such other reasonable mapping requirements as City may establish from time to time;

WHEREAS, Licensee will secure the appropriate licenses, encroachments and other permits required by the City for the placement of its Conduit Systems, Fiber Optic Networks, and related facilities within City right of way;

WHEREAS, Licensee has agreed to comply with public property use requirements that City has and may establish from time to time.

NOW THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the City hereby grants to Licensee a telecommunication license and permission to use the public right-of-way pursuant to the terms and conditions set forth herein.

DEFINITIONS

Cable Services shall have the same meaning as defined in Chapter 151 of the El Mirage City Code, herein incorporated by this reference, and in A.R.S. § 9-581. Cable Services is not a Telecommunications Service.

Conduit means pipes made of varying materials designed to protect buried Fiber Optic Cables.

Conduit System means any combination of Conduits, ducts, inner-ducts, manholes, and hand holes – all joined to form an integrated whole.

Dark Fiber means Fiber Optic Cables that have not been connected to transmission equipment or otherwise part of a Fiber Optic Network. Dark Fiber sales and leasing is not a Telecommunications Service.

Facilities means the plant, equipment, and property used in the provision of communication and Telecommunication Services and not owned by the City, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW.

Fiber Optic Cable means a cable containing bundles of optical fibers used to carry optical signals. Fiber Optic Cables may be part of a Fiber Optic Network.

Fiber Optic Network means a communication system consisting of an optical transmitter used to convert an electrical signal into an optical signal to send into an optical fiber, Fiber Optic Cables routed through conduits and buildings, amplifiers, and an optical receiver to recover the signal as an electrical signal. A Fiber Optic Network contains Fiber Optic Cables and is used for the purpose of Telecommunications Services.

Right-of-Way (“ROW”) means the roads, streets, highways, and alleys and all other dedicated public rights-of-way and public utility easements of the City.

Telecommunications means the transmission of information, between or among points specified by a user, of the user’s choosing, without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, or the sale or leasing of Dark Fiber for transmission purposes.

Telecommunications Services means the offering of Telecommunications for a fee directly to the public or to such users as to be effectively available directly to the public. Telecommunications Services does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, the sale or leasing of Dark Fiber for transmission purposes, or the sale or leasing of Conduit.

LICENSE

1. LICENSE; TERM

- 1.1. License; Route. The City hereby grants to Licensee a non-exclusive, revocable license to use the designated portion of the ROW (“Route”) subject to and conditioned upon Licensee’s full, timely, complete, and faithful performance of all obligations required under

this License. Such use of the Route will be for the sole purpose of operating and maintaining a wired network as described in this License. The Route will be occupied by Licensee's Conduit System, Fiber Optic Network, plant, equipment, and property used in the provision of communication and Telecommunication Services, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW (collectively, the "Licensee's Facilities") and is as described in **Exhibit A**, herein incorporated by this reference. Licensee may request modification or expansion of the Route by submitting all required permits for construction to the City. Any modifications or expansions to the Route shall be governed by the terms and conditions of this License and must be approved in writing by the City in its sole discretion. Any modifications or expansions shall become part of the Route. This License will not allow Licensee to use any portion of the ROW that is abandoned by the City or removed from the City's legal boundaries or for any purpose other than that expressly stated herein.

- 1.2. Term; Effective Date. This License is effective the date the last party signs ("Effective Date"). This License shall remain in effect for five (5) years from the Effective Date ("Term"), unless sooner terminated. No provision of this License may be construed to grant any automatic extension, renewal, or replacement thereof.
 - 1.2.1. If Licensee's Facilities remain in the Route, and Licensee continues to use such Licensee's Facilities beyond the expiration of the Term, the License shall be considered to be in a "Holdover Term," subject to the terms and conditions of this License. Such Holdover Term, however, shall not exceed sixty (60) days beyond the expiration of the Term, and no permits will be issued to Licensee by the City until a new License has been approved by the City Council.
 - 1.2.2. Failure by Licensee to have a valid License to use the Route or other ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the City to Licensee. If, however, Licensee has timely filed its application and is in active negotiations with the City prior to the expiration of the License, the City may, in its discretion, grant, extend, or take no action on permits issued to Licensee prior to the expiration of this License.
- 1.3. Renewal. The parties may extend the Term of this License for up to three (3) additional five (5) year periods upon the mutual written consent of both parties. Such renewal must be made within one-hundred eighty (180) days prior to the termination of the initial Term of the License. Licensee understands that the City may adopt future code amendments or fee schedules relating to use of the ROW which may become applicable this License upon its initial or subsequent renewal. Licensee acknowledges the right of the City to adopt and implement such lawful code amendments and/or fee schedules to the extent consistent with applicable law.
- 1.4. Amendments to License. This License may not be amended without the written approval of both parties, except as described herein.
- 1.5. No Real Property Interest. Notwithstanding any provision in this License to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Route is limited to the license rights created by this License, which creates a revocable (subject to

the terms and provisions herein), non-exclusive license in the Route. The City and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the Route or any portion of the ROW. Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Route. Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the Route or Licensee's use thereof.

- 1.6. “AS-IS” Condition. Licensee is responsible for the study and inspection of the Route to be used pursuant to this License and for determining the fitness for use intended by Licensee. The City expressly disclaims all warranties of merchantability or fitness for a particular purpose or absence of hazardous conditions associated with the Route and the ROW. Licensee accepts the Route and ROW in “AS-IS” condition, without representation or warranty of any kind by the City, its officers, agents, or employees, and subject to all applicable laws governing the use of the Route for the permitted uses allowed by this License.
- 1.7. Mapping Requirement. Licensee shall maintain as-built drawings of Licensee’s Facilities located within the Route and furnish a copy to the City using asbuilts in pdf and AutoCAD. Upon completion of new or relocation construction of Licensee’s Facilities in the Route, Licensee shall create and maintain precise, up-to-date maps of any of Licensee’s Facilities and the Route using asbuilts in pdf and AutoCAD and will make this information available to the City.
- 1.8. Dark Fiber. To the extent Licensee occupies the ROW with empty Conduit and/or Dark Fiber and/or uses the ROW to provide services other than the Telecommunication Services as defined by A.R.S. § 9-581, such use or occupation of the ROW is subject to the terms and conditions of this License and any applicable fees, permits, and laws.
- 1.9. Cable System. If Licensee obtains or seeks federal, state, or local approval to provide Cable Services over Licensee’s Facilities within the City, this License shall remain in effect according to its terms, and Licensee shall continue to pay any fee required by this License, regardless of any legal or regulatory provisions, permits or other processes or rules that might now or hereafter provide otherwise. This License does not allow Licensee to provide one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmission within the City that may be subject to a cable television license or franchise within the City’s boundaries.
 - 1.9.1. Licensee shall not use Licensee’s Facilities to provide Cable Services, cable television, or for open video service without the proper formal authorization by the City in separate agreements.
 - 1.9.2. Licensee may enter into User Contracts, as defined in Section 3.8, to allow third-parties to use Licensee’s Facilities for Cable Services, cable television, or for open video service only if the third-party has already entered into the proper agreements with the City that allows the third-party to conduct such activities.

2. USE OF THE ROW; PERMITS

- 2.1. Maintenance of Licensee's Facilities. Licensee shall be solely responsible for all maintenance, repair, and provision of all utilities for Licensee's Facilities under this License. Licensee shall at all times repair and maintain Licensee's Facilities and the Route at Licensee's sole expense in a sound, clean, safe manner, meeting or exceeding the best industry practices.
- 2.2. For purposes of this License, whenever work is done in the ROW or adjacent to the ROW as part of any work Licensee is performing in the ROW, Licensee agrees to indemnify the City for the acts, errors, omissions, and any negligence of any or all non-City persons, firms, partnerships, corporations, associations or other organization, or a combination of any of them, including any subcontractor hired and/ or used by Licensee, that performs services or provides goods relating to this License.
- 2.3. Licensee shall ensure that Licensee and its employees, agents, contractors, and representatives comply with all ROW use requirements, including, but not limited to, the following:
 - 2.3.1. Licensee shall ensure that Licensee's Facilities are constructed, installed, operated, repaired, and/or maintained in accordance with the El Mirage City Code and established practices with respect to the ROW, including, but not limited to, obtaining the proper permits prior to commencing any work and following all terms and conditions of such permits.
 - 2.3.2. Licensee's use of the ROW shall be according to plans approved by the City Engineer, provided that such approval of plans shall not be unreasonably withheld or delayed.
 - 2.3.3. Licensee's Facilities to be constructed, installed, operated, maintained, upgraded, and/or removed shall be located or relocated as to interfere as little as possible with traffic or other authorized uses within the ROW. Any phases of construction and/or installation relating to traffic control, backfilling, compaction, paving, and/or location or relocation of Licensee's Facilities shall be subject to regulation by the City Engineer.
 - 2.3.4. Provided such guidelines complies with State and Federal law, the City may issue reasonable policy guidelines to all Telecommunications Services licensees/permittees to establish procedures for determining how to control the issuance of engineering permits to multiple licensees/permittees for the same one-mile segments of the ROW. Licensee agrees to cooperate with the City in establishing such policies with procedures established by the City Manager or their designee to coordinate the issuance of multiple engineering permits in the same one-mile segments of the ROW.
 - 2.3.5. Licensee and its employees, agents, contractors, and representatives are subject to the City's exercise of its police, regulatory, and other powers as the City now has or may later obtain, and a license or other agreement may not waive application of the same. The City shall have continuing jurisdiction and supervision over any facilities located within or on the ROW, including, but not limited to, Licensee's Facilities. Daily administrative, supervisory, and enforcement responsibilities are hereby delegated and entrusted to the City Manager or their designee to interpret, administer, and enforce the provisions of this License.

- 2.4. Permits before Construction/Installation. Licensee may not install, construct, locate, or attach any Licensee's Facilities to any property within the City, including the ROW, until Licensee has applied for and received approval for permits from the City Engineer. Licensee shall be solely responsible for any and all acts, errors, omissions, and negligence of Licensee's contractors (and any subcontractors used thereunder) who are involved in the design, installation, construction, maintenance, repair, location, relocation, and/or any other activity involving Licensee's Facilities subject to this License. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with all provisions of the El Mirage City Code, including, but not limited to, off-site construction regarding streets and sidewalks and other applicable City and/or Maricopa County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Licensee's use of the ROW as may be deemed best for the public interest, safety, or welfare, to the same extent that such restrictions and limitations are applied to all non-governmental occupants/users of the ROW.
- 2.5. Details/Specifications for Permits. Licensee shall submit all applicable permit applications together with the details, plans, and specifications for City review and approval, and pay all lawful applicable application, review, and inspection fees, prior to any and all construction work to be performed pursuant to this License.
- 2.6. Stipulations. Licensee and its contractors shall abide by all stipulations of all licenses and permits issued.
- 2.7. Permits for Relocation. If Licensee desires to change the location of any portion of Licensee's Facilities from the initial permit application(s), Licensee shall apply for and obtain approval for an amendment to the permit prior to installation or construction, which approval shall not be unreasonably withheld or delayed.
- 2.8. Criteria for Approval. The City will approve or deny applications based on the availability of space at the location(s) sought by Licensee, safety, and other considerations in accordance with the El Mirage City Code, the City's practice, applicable ROW construction regulations, and other applicable laws.
- 2.9. Construction Standards. Any of Licensee's Facilities placed in the ROW shall be constructed using industry standard boring and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. Licensee and/or its contractors shall install any new Conduit and access points (e.g. manholes, pull boxes) using industry standard practices and in full compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, the City's supplements to MAG, and the City's Design & Development Standards Manual ("D&DS Manual").
- 2.10. Written Approval for Changes. Licensee shall obtain written approval from the City Engineer or their designee if Licensee desires to change any components of any Licensee's Facilities, which shall not be unreasonably withheld, delayed, or denied.
- 2.11. Work Restrictions/Requirements. Licensee shall comply with and ensure that its contractors comply with the City of El Mirage Design & Development Standards Manual

("D&DS Manual"), as amended from time to time, herein incorporated by this reference. All of Licensee's work under this License shall follow the El Mirage D&DS Manual, which includes, but is not limited to, defined road types, allowable hours of work and holiday/event restrictions, and other work requirements and restrictions. The City will provide the El Mirage D&DS Manual as requested and may be found on the City of El Mirage website.

- 2.12. Right to Inspect. The City shall have the right, but not the obligation, to inspect all construction and/or installation work performed subject to the provisions of this License and to make such tests as the City deems necessary to meet the City's standards, the El Mirage D&DS Manual, the MAG Uniform Standard Specifications and Standard Details for Public Works Construction, and any and all applicable City supplements thereto.
- 2.13. Common Installations. Licensee shall reasonably coordinate the installation of Licensee's Facilities with other utilities and the City to accommodate opportunities for common installation. Nothing herein shall require Licensee to incur any material additional expense to accommodate common installations.
- 2.14. Boring; Street Openings. Although the exact placement and location of Licensee's Facilities shall be determined by the City through the permitting process, Licensee has expressed its intent and the City has expressed its desire to have such Licensee's Facilities installed outside of the paved street area whenever such location is feasible and reasonable. If Licensee intends to place Licensee's Facilities by directional boring under such streets when feasible and reasonable, said bore profiles based on vacuum pothole information shall be part of the engineered plans to be submitted to the City. Arterial streets shall not be bored, unless approved by the City Engineer in writing. In the event that a street opening in the pavement cannot be avoided, Licensee agrees to pay a fee in accordance with the City's Community Development Fee Schedule, as amended, and the El Mirage City Code.
- 2.15. Dedicated Personnel. Licensee shall provide and identify a representative (e.g. project manager) who shall be the contact person for the City during any construction periods.
- 2.16. Adjacent Property-Owners. Licensee shall provide written notice to adjacent property-owners, or other individuals or entities having lawful control of adjoining property, of any activity by Licensee that may interfere with access to said property during all construction activities or other operations, except to the extent that this requirement of maintain access is waived in writing by the adjacent property-owner or other individual or entity having lawful control of such adjoining property. If an emergency requires activity without such written notice, Licensee shall use commercially reasonable efforts to provide timely actual notice to the adjacent property-owner or other individual or entity having lawful control of such adjoining property. Upon request, Licensee shall promptly provide the City with the documentation of such permission from such affected property owner.
- 2.17. Opening/Alteration. Whenever Licensee or Licensee's contractors (and any subcontractors used thereunder) shall cause any opening or alteration to be made for any purpose in any public streets or public places the opening or alteration shall be completed and restored with due diligence within seven (7) business days, weather permitting. Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Licensee or Licensee's contractors (and any subcontractors used thereunder) 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. Restoration. After any work, installation, repair, maintenance, replacement, or relocation work performed in the Route, Licensee shall restore all disturbed areas of the Route, affected ROW, and any affected surrounding property to the same condition or better that existed prior to the commencement of this License. Such restoration includes, but is not limited to, repairing and/or replacing to the City's standards, rules, and policies (as amended from time to time) all pavement, sidewalks, curbs, landscaping, or other City improvements that may be disturbed or damaged by Licensee's activities or work under this License.
- 2.19. Clean; Removal of Debris. Licensee and/or its contractors shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site, the Route, and the ROW in a safe, neat, and clean condition.
- 2.20. Safety. Licensee and its contractors shall be solely and completely responsible for the conditions of any job site, including safety of all individuals (including employees) and property, during performance of the work. This requirement shall apply continuously and is not limited to normal working hours. The safety provisions herein shall conform to all applicable federal (including OSHA), state, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the stricter requirement shall be followed. Licensee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Licensee from compliance with these provisions.
- 2.21. Traffic Control. Licensee shall comply with the following traffic control requirements:
 - 2.21.1. Licensee's traffic control shall comply with the City of El Mirage D&DS Manual, herein incorporated by this reference. Licensee shall follow the guidelines contained in the latest editions of the Manual on Uniform Traffic Control Devices ("MUTCD"), herein incorporated by this reference, and the City of Phoenix Traffic Barricade Manual, herein incorporated by this reference. Licensee shall additionally comply with any special provisions herein.
 - 2.21.2. At the time of the pre-construction conference, Licensee shall designate an individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazards and accidents. At the same time, the City shall designate a representative who will be responsible for ensuring that all traffic control and traffic control alterations are implemented per the traffic control specifications as defined in the approved traffic control plan.
 - 2.21.3. Licensee shall have the full responsibility and liability for traffic control for a project. Licensee shall submit a traffic control plan ("Traffic Control Plan") to the Engineering Division for approval – five (5) business days prior to beginning work under this License. The Traffic Control Plan shall include all motor vehicles, bicyclists, and pedestrians. Licensee shall not begin construction until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be

maintained onsite during all phases of construction; otherwise, construction will cease until the Traffic Control Plan is approved. During construction it may be necessary to alter traffic control as approved by the Engineering Division. Alterations to traffic control shall be in accordance with City of El Mirage D&DS Manual, the latest edition of the MUTCD, or the latest edition of the City of Phoenix Traffic Control Manual. The most restrictive manual shall apply. Licensee shall pay any and all applicable barricade fees.

- 2.21.4. In the event Licensee or Licensee's contractors (and any subcontractors used thereunder) damages any traffic signal equipment, traffic signal conduit, loop detectors, and/or circuits, Licensee shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the City. Any damage repaired by the City will be billed to Licensee at cost.
- 2.21.5. Licensee shall notify all adjacent and/or affected residents and/or businesses in advance of any street, alley, sidewalk, and driveway closures per the El Mirage D&DS Manual so that they can make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.
- 2.21.6. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by the Engineering Division.
- 2.22. Blue Stake. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 and participate as a member of the Arizona Blue Stake Center. A copy of the agreement or proof of membership shall be filed with the City Engineer.
- 2.23. Compliance with Laws. Licensee shall comply with all applicable laws as amended from time to time, including but not limited to, the El Mirage City Code, Arizona law, and federal law in the exercise and performance of its rights and obligations under this License. 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 the business activities anticipated by this License, Licensee shall comply with such laws or regulations. 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.

3. NON-EXCLUSIVITY; THIRD-PARTY CONTRACTS

- 3.1. Non-Exclusive. This License is non-exclusive and nothing herein shall prevent the City from granting like or similar privileges to any other individual or entity.
- 3.2. City's Control of ROW. Any and all rights granted to Licensee shall be subject to the prior and continuing right of the City to use and manage the ROW exclusively or concurrently with any individuals and/or entities and to manage the City's own conduit, fiber optic cables, or facilities. Any and all rights granted to Licensee shall be subject to all deeds, easements, dedications, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this License shall be construed to grant, convey, create, or vest any real property interest in land to Licensee, including any fee or leasehold interest, easement, or any franchise rights. The City shall have full authority to regulate, on a non-discriminatory basis, use of the Route and the ROW and to resolve competing

demands and preferences regarding use of the Route and the ROW and to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, the City may, to the extent consistent with applicable law, take any or all of the following into account in regulating use of the Route and the ROW:

- 3.2.1. All timing, public, operational, financial, and other factors affecting existing and future proposals, needs, and plans for Competing Activities, as defined in Section 3.6;
 - 3.2.2. All other factors the city may consider relevant, whether or not mentioned in this License; and/or
 - 3.2.3. Differing regulatory regimes and/or laws applicable to claimed rights, public benefits, community needs, and all other factors relating to Competing Activities, as defined in Section 3.6.
- 3.3. Accommodate City's Activities. The City shall not be liable for lost revenues sustained by Licensee, however caused, because of damage, modification, alteration, or destruction of Licensee's Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.
- 3.4. City's Rights. There is hereby reserved to the City every right and power required pursuant to this License to be herein reserved or provided by any lawful ordinance or law, and Licensee by its execution of this License agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of the City.
- 3.5. Interference with Communications Operations. Licensee shall not install, operate, or allow the use of any equipment, methodology, or technology that may or would interfere with the optimum effective use or operation of the City's existing or future fire, emergency, or other communications equipment, methodology, or technology. Licensee shall be responsible to ensure compliance with this requirement by all persons using the Route through or under Licensee. If such interference should occur, Licensee shall immediately discontinue using the equipment, methodology, or technology that causes the interference until Licensee takes corrective measures to alter the Route
- 3.6. Competing Activities. Licensee accepts the risk that there may exist, now or in the future, all manner of work and improvements upon the ROW ("Competing Activities"). Competing Activities include, but are not limited to, laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, or realigning, whether above, upon, or below the surface of the ROW and whether occasioned by the existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land, (i) all manner of streets, sidewalks, alleys, trails, ways, and traffic control devices of every description, (ii) all manner of other transportation facilities and their appurtenances, (iii) all manners of pipes, wires, cables, conduits, sewers, storm drains, pumps, valves, switches, conductors, connectors, poles, supports, access points and guys of every description, (iv) all manner of other utility facilities and their

appurtenances, (v) all manner of canals, drains, bridges, underpasses, culverts and other encroachments of every description and all manner of other facilities and their appurtenances, and (vi) all other uses of the ROW that the City may permit from time to time.

- 3.7. Subordinate Rights. Any right or privilege claimed pursuant to this License by Licensee for any use of the ROW shall be subordinate to: (i) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; (ii) any prior lawful occupancy or use thereof by any other individual or entity; and (iii) any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with the property rights established independent of this License. Licensee shall not obstruct, impede, disrupt, or interfere with or prevent any Competing Activities or any person or entity that has prior or subsequent rights to use the Route and/or ROW.
- 3.8. Third-Party Contracts. Licensee may enter into contracts with third-parties (“ROW Users”) in the ordinary course of Licensee’s business for use of Licensee’s Facilities within the Route, subject to this License. Such contracts (“User Contracts”) are subject to all terms and conditions of this License, including, but not limited to, the following:
 - 3.8.1. ROW Users shall not perform any construction, maintenance, repair, or any other work in the ROW, unless a ROW Users has a separate agreement with the City to do so; and
 - 3.8.2. Identities of ROW Users shall be disclosed to the City, upon reasonable request, but will be deemed confidential if consistent with Arizona public records laws.
- 3.9. Disruption by Others. The City and its officials, agents, employees, or contractors shall not be liable to Licensee or its customers, the ROW Users, or other contractors for any service disruption or for any other harm caused to them or the Route due to Competing Activities.
- 3.10. Compliance with License. Licensee shall cause all persons and/or entities using the ROW through or under Licensee or this License to comply with all terms and conditions of this License. Licensee is responsible for any and all violations of this License by persons and/or entities using the ROW through or under Licensee or this License.

4. **FEES**

- 4.1. City’s Right of Fair and Reasonable Compensation. By entering into this License, neither party waives any current or future rights reserved under the law or the Telecommunications Act of 1996, including, but not limited to, those rights pursuant to Section 253(c) that reserve the City’s right to manage the ROW and to require fair, non-discriminatory and reasonable compensation from Licensee for use of the ROW.
- 4.2. Licensee’s Payments. Licensee shall pay to the City each of the following separate and cumulative amounts (collectively, the “Fee Payment”):
 - 4.2.1. An amount (the “Annual Fee Payment”) based on Licensee’s use of the Route to provide interstate telecommunications services as such services are defined by A.R.S. § 9-583(C)(2).

- 4.2.2. An amount (the "Permit Fee Payment") based on Licensee's permit review and other costs as set out below.
- 4.2.3. An amount (the "Violation Fee Payment") based on certain breaches by Licensee of this License as set out below.
- 4.2.4. An amount (the "Transaction Privilege Tax") based on any qualifying services under the El Mirage Tax Code.
- 4.2.5. All other amounts required by this License.
- 4.3. Annual Fee Payment Amount. Licensee warrants that Licensee's System is dedicated exclusively to the provision of Telecommunication Services. Accordingly, for any portion of Licensee System used for services other than Telecommunications Services, Licensee must pay an annual fee to use the Public Rights-of-Way and other City-owned property under the terms and conditions of this License, as permitted under A.R.S. title 9, chap. 5, art. 7, as amended, and as established by this section. The amount of the Annual Fee Payment shall be (\$.89) per linear foot of trench in the ROW.
- 4.4. Appropriate Taxes. Licensee shall pay any applicable city, county and state transaction privilege and use taxes. Such taxes are in addition to any non-tax amounts owed by Licensee pursuant to this Section. Licensee consents to the disclosure of any and all information reported on Licensee's transaction privilege tax returns by authorizing and allowing the City's tax collector to release such information to the City Manager or designees.
- 4.5. Permit Fee Payment Amount. Licensee shall pay all applicable construction permit fees, including, but not limited to, charges for encroachment permit applications, issuance, inspection, testing, plan review, and any other fees adopted by the City and applicable to persons doing work or encroaching in the ROW.
- 4.6. Adjustments. All fixed dollar amounts stated in this License shall be automatically adjusted upward by a rate of three percent (3%) annually on July 1st. Insurance coverages shall be rounded to the nearest million dollars.
- 4.7. Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.
- 4.8. Fee Payment Schedule. Except as specifically provided elsewhere for Violation Fee Payment, Licensee shall pay all lawful Fee Payment on the following schedule:
 - 4.8.1. Licensee shall pay Annual Fee Payment by the anniversary date of each year of this License.
 - 4.8.2. Licensee shall pay Permit Fee Payment at the times and in the amounts specified by the City's normal processes for permitting, including, but not limited to, construction permits, encroachments, issuances, inspections, testing, plan review, and other processes applicable to persons doing work or encroaching in the ROW.
 - 4.8.3. All other Fee Payment shall be payable quarterly in arrears on the last calendar day of the first month of the next calendar quarter. For example, the Violation Fee

Payment for the first calendar quarter of a year shall be payable on or before April 30.

- 4.9. Fee Payment Amount Report. Each installment of Fee Payment by Licensee, other than Permit Fee Payment, shall include a report showing the manner in which each component of the Fee Payment was calculated. The report shall summarize the transactions giving rise to the License Fee Payment.
- 4.10. Damage Fees. Licensee shall pay all reasonable costs associated with any damage caused by Licensee to the ROW or other public property.
- 4.11. Violation Fee Payment. During the Term of this License, the City may suffer certain money damages in the form of administrative cost and inconvenience, disharmony among Competing Activities, and general inconvenience in ROW use by the City, Competing Activities, and the public as a result of an uncured violation of this License by Licensee ("Inconvenience Costs"). Assessing the actual damages for these Inconvenience Costs may be impracticable to determine. In lieu of paying the actual damages for these Inconvenience Costs, the City may assess Violation Fee Payments against Licensee to cover the damages that caused the Inconvenience Costs and is as described in Section 4.11.1. The Violation Fee Payments will be assessed with the processes described in Section 4.11.2. The Violation Fee Payments are only intended to remedy the Inconvenience Costs that the City suffers. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this License or limit in any way the City's obtaining any other legal or equitable remedy provided by this License or otherwise for such breach. For example, Licensee's obligation to pay Violation Fee Payment does not in any way detract from Licensee's indemnity and insurance obligations under this License, which shall apply according to their terms in addition to Licensee's obligation to pay Violation Fee Payment. Provided however, that if the City determines to exercise any other legal or equitable remedy provided by this License or otherwise, City may not, in addition to such remedy, assess a Violation Fee Payment. Except for any failure to properly restore the public ROW under 4.11.1.1, or other violation of this License by Licensee that in the City's sole determination may impact the health, safety, or welfare of the public, City shall use reasonable efforts to notify Licensee of any violation of this License and permit Licensee an opportunity to cure such violation in accordance with the applicable cure period in this License or as otherwise agreed by City.
 - 4.11.1. The Violation Fee Payments per calendar day or part thereof are as follows:
 - 4.11.1.1. The amount of Six Hundred Dollars (\$600.00) per calendar day for Licensee's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) calendar days after the City's notice to correct such defects except where such curative efforts by Licensee are precluded by a force majeure event. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the ROW or correct the violation.
 - 4.11.1.2. Following a ten (10) day notice to cure, the amount of Two Hundred Fifty Dollars (\$250.00) per calendar day for each failure to make Licensee's books and records available as required by this License.

- 4.11.1.3. The amount of Five Thousand Dollars (\$5,000.00) for any unauthorized partial or total assignment of this License.
 - 4.11.1.4. The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Licensee in violation of this License that causes Inconvenience Costs and that is not cured after ten (10) calendar days' notice.
- 4.11.2. Process for assess a Violation Fee Payment:
- 4.11.2.1. If the City determines that Licensee is liable for Violation Fee Payment, then the City shall issue to Licensee a notice of the City's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.
 - 4.11.2.2. Licensee shall have thirty (30) calendar days after the notice to pay the Violation Fee Payment or give Licensor notice contesting the assertion of noncompliance.
 - 4.11.2.3. If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment.
- 4.11.3. Except as may be expressly stated in this Section 4, no cure period applies to the accrual of Violation Fee Payment.
- 4.11.4. Licensee may elect to draw upon the letter of credit to collect the Violation Fee Payment
- 4.12. Deadlines for Annual Fees. For any annual payment(s) owed, Licensee shall make such payment(s) to the City within ten (10) business days of the Effective Date and by the anniversary of the Effective Date for the duration of the Term.
- 4.13. Late Fees. Licensee agrees that if it fails to pay any amounts owed to the City by the time prescribed for payment, Licensee shall pay interest on the amounts owed at the rate of one percent (1%) per month.
- 4.14. Requirement of Insurance, Performance Bond, and Letter of Credit. Prior to any work being performed in the ROW, Licensee shall secure all performance bond and letter or credit requirements in this License and provide the City with all insurance requirements prior to the commencement of any work, including, but not limited to, all certificates of insurance required by this License.
- 4.15. Performance Bond.
- 4.15.1. Prior to receiving any permit to construct, install, maintain or perform any work on public property, Licensee shall cause to be filed and maintain until completion of the construction, a faithful performance bond in favor of City in the sum of One Hundred Thousand Dollars (\$100,000.00) or 125% of the amount of the construction costs (whichever is greater) to guarantee that Licensee shall 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 of 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 shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. The City and Licensee agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the security fund.

4.15.2. If Licensee has completed the above construction and wants the bond released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

4.16. Security.

4.16.1. Prior to applying for any permit to construct, install, maintain or perform any work in the ROW which requires a construction permit from the City pursuant to applicable El Mirage City Codes, Licensee shall provide either a cash deposit into a suitable interest-bearing account, established by the City, a domestic irrevocable standby letter of credit, or a faithful performance bond in the sum of not less than Fifty Thousand Dollars (\$50,000.00) 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 City 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 City which arise by reason of the construction, operation or maintenance of the Fiber Optic Network (the "security fund"). The City shall have the full power of withdrawal of funds from the account or letter of credit 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 and ten (10) days' prior written notice of intent to withdraw to Licensee.

4.16.2. Within twenty (20) days after notice to Licensee that any amount has been withdrawn by the City from the security fund, Licensee shall deposit a sum of money or present to the City an additional irrevocable letter of credit sufficient to restore such security fund account to the original amount.

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

4.16.4. The rights reserved to the City, with respect to the security fund, are in addition to all other rights of the City 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 City may have.

4.16.5. 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, within thirty (30) business days of such a determination.

5. **RELOCATION**

- 5.1. Licensee shall relocate, at no expense to the City, any of Licensee's Facilities, or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose or any City or other governmental project whenever directed to do so by City. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this License and any applicable issued permits. Within ninety (90) days following Licensee's receipt of the last permit or governmental approval required to perform such work, Licensee shall remove the designated portions of Licensee's Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the ninety-day period, Licensee shall take reasonable steps to remove Licensee's Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City.
- 5.2. Licensee agrees to obtain a permit as required by this License prior to removing, abandoning, relocating, or reconstructing any portion of Licensee's Facilities on public property or ROW. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when Licensee is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of Licensee's Facilities. Licensee will maintain any annual permits required by the City for such maintenance and emergency repairs. Licensee will notify the City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.
- 5.3. If the City needs to perform any part of the necessary relocation or removal work that has not been done within the time required by the City, it shall be entitled to seek payment for such actual and reasonable relocation costs by drawing upon the letter of credit or security fund required by this License pursuant to Section 4.16 or the performance bond pursuant to Section 4.15.
- 5.4. The City has no obligation to relocate or otherwise move Licensee's Facilities, any City-owned facilities, Conduit, or Fiber Optic Cables, ROW Users' Facilities, or any other Facilities of persons or entities lawfully using the ROW. The City shall require that third parties be responsible for relocation work of Licensee's prior existing Licensee Facilities in the ROW not necessitated by the City.
- 5.5. Any relocation work performed by Licensee or its contractors shall be subject to and comply with this License.

6. **DAMAGE TO PUBLIC PROPERTY**

- 6.1. In addition to any indemnity obligation under this License, whenever the installation, use, maintenance, removal, or relocation of any of Licensee's Facilities is required or permitted hereunder, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any ROW or public property or any public improvement that may be located thereon, therein, or thereunder, however such damage or disturbance was caused, Licensee, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If Licensee does not repair the damage or disturbance as just described, then City shall have the option, upon ten (10) business days' prior written notice to Licensee, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the actual and reasonable costs incurred by the City at City's standard rates.
- 6.2. Notwithstanding the notice provision above, in the event of a public emergency, the City shall have the right to immediately perform, without prior written notice to Licensee, such reasonable and necessary work on behalf of Licensee to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Licensee of the repairs as soon as practicable after the work has begun. Licensee agrees that any damage to City fiber, conduit, or other property must be replaced or repaired and restored with new or like-new materials. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs and/or relocation and/or removal costs from Licensee and may draw upon the performance bond and/or letter or credit or security fund required by this License in full or partial satisfaction of such costs, if payment is not made by Licensee as required by Section 6.3 below.
- 6.3. Upon the receipt of a demand for payment by the City, Licensee shall, within thirty (30) days, reimburse the City for such costs.
- 6.4. Damage to Public Property. Whenever the installation, removal, or relocation of any of Licensee's System is required or permitted under this License, and such installation, removal or relocation shall cause Public Rights of Way or on City-owned property to be damaged, Licensee, at its sole cost and expense, shall promptly repair and return Public Property in which the System components are located to a safe and satisfactory condition in accordance with applicable laws, with provisions in the Maricopa Association of Governments (MAG), the City's supplements to MAG, and El Mirage's City Code, reasonably satisfactory to the City Engineer.

7. PENALTIES FOR VIOLATION OF TERMS

- 7.1. The City's Remedies. The City may pursue any remedy at law, including but not limited to injunctive relief or civil trespass, until Licensee complies with the terms of this License or any applicable law. Such City remedies are cumulative and may be pursued in the alternative. The City's remedies set forth in this License are not exclusive. Except as otherwise set forth in this License, Election of one remedy by the City, including assessment of liquidated damages, does not preclude the use of other remedies.

- 7.2. Licensee's Remedies. Licensee sole remedy for any breach or threatened breach of this License by the City shall be an action for equitable or injunctive relief.

8. TERMINATION

- 8.1. The City Manager has the authority to terminate, subject to Licensee's right to notice and cure where provided, this License.
- 8.2. Immediate Termination. The City may terminate this License upon thirty (30) days' notice and Licensee's failure to remedy any of the following to the reasonable satisfaction of the City:
- 8.2.1. Licensee's Facilities are no longer in use. If Licensee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's or such other person's property shall be made for the benefit of creditors or if Licensee or such other person dies or is not regularly paying its debts as they come due (collectively a "Licensee Insolvency");
 - 8.2.2. Licensee fails to keep the Certificate in effect following any right of appeal or due process of the ACC;
 - 8.2.3. Licensee fails to maintain any insurance required by this License;
- 8.3. Cure of Defect; Termination. The following instances are defects in performance by Licensee shall be deemed instances of "Default" by Licensee:
- 8.3.1. Licensee fails to comply with the material terms and conditions of this License or applicable law, including, but not limited to, failing to maintain any insurance, security fund, or performance bond;
 - 8.3.2. Licensee fails to make payments to the City in the amounts and at the times specified in this License;
 - 8.3.3. Licensee fails to comply with the El Mirage Work Policy and any other construction, design, or other related requirement under this License;
 - 8.3.4. Licensee fails to construct in the designated, approved path of the Route;
 - 8.3.5. Licensee fails to provide the current, accurate as-built plans and maps showing the Route, including all of Licensee's Facilities in the Route; and
 - 8.3.6. Licensee fails to obtain or maintain the required licenses, permits, or other approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.
- 8.4. Curing Default. The City may terminate this License if Licensee does not cure the defect in performance, as listed as Section 8.3 as instances of Default, within sixty (60) days (or such longer period of time as the City determines is reasonably necessary to cure) following the City's written notice of Licensee's defective performance. Upon the occurrence of Default or at any time thereafter, the City may do any of the following:

- 8.4.1. Pay or perform for Licensee's account, in Licensee's name, and at Licensee's expense, any and all payments or performances required to be paid or performed by Licensee;
 - 8.4.2. Require an additional security deposit adequate in the City's sole reasonable discretion to protect the City and the ROW in light of Licensee's history of performance under this License;
 - 8.4.3. Abate at Licensee's expense any violation of this License; and/or
 - 8.4.4. Be excused without any liability to Licensee from further performance of any and all obligations under this License.
- 8.5. No Need to Cure. The City will not need to provide Licensee with a cure period prior to termination if the City finds the defect in performance is due to intentional misconduct, a violation of law, or is part of a pattern of repeated and persistent violations where Licensee has already had notice and an opportunity to cure.
- 8.6. Licensee's Termination. Licensee may terminate this License by providing the City with ninety (90) days' written notice and only upon making arrangements satisfactory with the City Engineer to remove all Licensee's above ground Licensee's Facilities from public property and the ROW, unless the City Engineer agrees in writing to allow Licensee to abandon part or all of Licensee's Facilities in place. If the City Engineer agrees to allow Licensee to abandon Licensee's Facilities in place, the ownership of such Licensee's Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and Licensee shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.
- 8.7. Restoring the Route. Upon termination or revocation of this License, Licensee shall cease using the Route. Licensee shall return the Route and any affected portions of the ROW or surrounding property affected by Licensee's Facilities and/or work to the same condition or better condition prior to the commencement of this License, reasonable wear and tear excepted. Licensee shall remove all of Licensee's Facilities if requested by the City upon termination and/or revocation of this License, including, but not limited to, all above ground and subsurface portions of Licensee's Facilities.

9. GOVERNING LAW

It is mutually understood and agreed that this License shall be governed by the laws of the State of Arizona, both as to interpretation and performance, without giving effect to its principles of conflicts of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this License or any provision thereof shall be instituted only in the federal or state courts located within or within the jurisdiction of Maricopa County, Arizona.

10. COMPLIANCE WITH LAWS

- 10.1. Compliance with A.R.S. § 38-511. Pursuant to A.R.S. § 38-511, the City may cancel this License within three (3) years after License execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this License on behalf of the City is or becomes at any time while this License or an extension of this License is in effect an employee of or a consultant to Licensee with

respect to the subject matter of this License. The cancellation shall be effective when Licensee receives written notice of the cancellation, unless the notice specifies a later time.

- 10.2. The Parties shall comply with all federal, state and local laws, codes, rules and regulations.
- 10.3. Compliance with A.R.S. § 35-393.01. Licensee hereby certifies that it does not, and will not, participate in during the term of this License, a boycott of Israel in accordance with Arizona Revised Statute §35-393.01. Licensee hereby agrees to indemnify and hold harmless the City, its agents and employees from any claims or causes of action relating to the City's action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such an action.
- 10.4. Compliance with Federal Immigration Laws and Regulations. Licensee warrants that it complies with all federal immigration laws and regulations that relate to its employees and that it complies with A.R.S. § 23-214(A). Licensee acknowledges that pursuant to A.R.S. § 41-4401, a breach of this warranty is a material breach of this License subject to penalties up to and including termination of this License, and that the City retains the legal right to inspect the papers of any employee who works on the License to ensure compliance with this warranty.

11. INDEMNIFICATION

- 11.1. Licensee acknowledges that it has liability for any and all of Licensee's Facilities installed in the public ROW and in the Route, its use of the ROW and the Route, and for its exercise of its rights under this License directly or through its contractor(s), except for the intentional or negligent acts on the part of the City or its agents. To the fullest extent permitted by law, Licensee, shall defend, indemnify and hold harmless the City, and its officials, boards, commissions, agents or employees, individually and collectively, from and against any and all losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including but not limited to, reasonable attorney's fees incurred through all appeals ("Claims") arising out of or alleged to have resulted from or materially related to the acts, errors, mistakes, or omissions of Licensee, its employees, representatives, or any tier of Contractors or any other person for whose acts, errors, mistakes, and/or omissions Licensee may be legally liable. This defense and indemnification requirement includes any Claims or amounts arising or recovered under worker's compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of Licensee, its agents, employees or representatives to fulfill Licensee's obligations under this License, whether resolution of the above Claim(s) proceeds to judgment or not. The provisions of this Section shall survive termination of this License. This Section applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable duty.

- 11.1.1. In the event that a notice of claim is served on the City or litigation is commenced against the City, the City must tender the defense of the litigation to Licensee, who shall defend the litigation. 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 directly obligate or affect the City, acceptable to the City). Licensee must consult with the City while conducting its defense of the City and must keep the El Mirage City Attorney's Office informed of the status and progress

of all litigation involving the City that has been tendered to Licensee or its insurance carrier.

- 11.1.2. The parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City and provide copies of all accident reports, incident reports, statements or other documents that are relevant to the claims, demands or lawsuits or which may lead to the discovery of relevant materials or information, in the possession of the other party, its employees, representatives, contractors, and/or others.
- 11.2. Subject to any privilege and/or confidentiality legal protections, both parties agree to make their employees, representatives, and contractors available to the other party to gather any relevant information relating to an incident from which any claim, demand, or lawsuit arises.
- 11.3. It is the purpose of this Section to provide maximum indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by Licensee against any and all claims, demands or lawsuits brought by a third party. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose either from City's negligence or intentional acts or that the City was comparatively at fault for the damages.
- 11.4. The provisions of this Section shall not be dependent or conditioned upon the validity of this License, but shall be and remain a binding right and obligation of the City and Licensee, even if part or all of this License is declared null and void in a legal or administrative proceeding. It is the intent of Licensee and the City upon the effective date of this License, that this Section serves as any such declaration and shall be a binding obligation of and inure to the benefit of Licensee and the City and their respective successors and assigns, if any. Any failure to perform under the terms of this Agreement by Licensee shall be considered a material breach of this License.
- 11.5. The amount and type of insurance coverage requirements set forth in this License will in no way be construed as limiting the scope of the indemnity in this Section.
- 11.6.

12. **INSURANCE**

- 12.1. **Limits of Insurance.** Licensee shall at all times during the term of this License, at its own cost and expense, carry and maintain commercial general liability insurance against claims for bodily injury (including death) or property damage, products/completed operations and personal and advertising injury, which insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of Licensee or its officers, agents, representatives, or employees during all times that this License is in effect. Limits may be attained by a combination of primary and umbrella liability coverage. Licensee shall maintain limits no less than those stated herein for each type of insurance.
- 12.2. **General Requirements.** Licensee's insurance of the types and amounts required in this Section shall be from companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized or permitted to do business in the State of Arizona.

- 12.2.1. 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 License is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the City, constitute a material breach of this License and may result in termination of this License.
- 12.2.2. The insurance coverage, except workers' compensation and employer's liability, and professional liability, required by this License, shall include the City, its agents, representatives, directors, officials, and employees, as additional insureds as their interest may appear, and shall specify that insurance afforded Licensee shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by the City or its employees shall not contribute to the coverages provided by Licensee. This provision and the inclusion of the City as an additional insured shall not be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(ies).
- 12.2.3. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) for workers' compensation against the City, its representatives, officers, directors, officials and employees for any claims arising out of Licensee's acts, errors, mistakes, omissions, work or service.
- 12.2.4. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of Licensee who shall be solely responsible for the deductible and/or self-insured retention.
- 12.2.5. Upon receipt of notice from its insurer(s), Licensee shall use commercially reasonable efforts to provide the City with thirty (30) days' prior written notice of cancelation of any policy required herein.
- 12.2.6. Upon request, Licensee shall furnish separate certificates for each of Licensee's contractors (and any subcontractors used thereunder). All coverages for Licensee's contractors (and any subcontractors used thereunder) shall be subject to the same limits as required for Licensee.
- 12.2.7. The City reserves the right to periodically review said insurance limits to ensure coverage is based on market and risk requirements throughout the effective term of this License.

12.3. Proof of Insurance – Certificates of Insurance.

- 12.3.1. Upon execution of this License, Licensee shall furnish to the City Certificates of Insurance issued by Licensee's agent or broker, as evidence that policies providing the required coverages, conditions and limits required by this License are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates, which reasonable approval shall not be withheld, delayed, or conditioned. Such Certificate(s) shall include the blanket additional insured endorsement including the City as an Additional Insured pursuant to Section 12.2.2 and shall be attached as Exhibit C to this License.

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

12.3.3. All Certificates of Insurance shall identify the policies in effect on behalf of Licensee, their policy period(s), and limits of liability required herein. Coverage shown on the Certificate of Insurance must coincide with the requirements in this License. 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 carrier or agent. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this License shall be sent to:

City of El Mirage
Attn: City Clerk
10000 N El Mirage Rd
El Mirage, AZ 85335

With copy to:
City of El Mirage
Attn: City Engineer
10000 N El Mirage Rd
El Mirage, AZ 85335

12.3.4. The City reserves the right to review certified copies of any or all of the herein required insurance policies and/or endorsements. Such policies shall be made available for review in Maricopa County, Arizona. The 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 the City's right to insist on, strict fulfillment of Licensee's obligations under this License.

12.4. Required Coverage. Such insurance shall protect Licensee from claims set forth below that may arise out of or result from the operations of Licensee under this License and for which Licensee may be legally liable, whether such operations be by Licensee or by anyone directly employed by Licensee. Coverage under the policy will be at least as broad as ISO forms or equivalent thereof, including but not limited to: severability of interest and waiver of subrogation clauses; claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees; claims for damages insured by usual personal and advertising injury liability coverage; claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; and claims involving contractual liability applicable to Licensee's obligations under the indemnification Section herein.

12.5. Commercial General Liability – Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written in the amount of \$2,000,000 limits per occurrence and \$5,000,000 general aggregate in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the ISO Additional Insured form, and shall include coverage for Licensee's completed operations and products.

12.6. Worker's Compensation and Employer's Liability. Licensee shall maintain Worker's Compensation insurance in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance with a limit of \$1 million for each accident, \$1 million disease coverage for each employee, and \$1 million disease policy limit.

- 12.7. Automobile Liability. If Licensee owns and/or operates vehicles in Arizona, Licensee shall maintain Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1 million each accident covering all owned, hired, and non-owned vehicles assigned to or used in performance of Licensee's work. Any combination between automobile liability and excess/umbrella liability amounting to a minimum of \$5 million per occurrence in coverage will be acceptable. Coverage shall be at least as broad as ISO policy form or equivalent.

13. **LIMITATION OF LIABILITY**

- 13.1. 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 operations of Licensee's Fiber Optic Network or the provision of services, or for any damages arising out of or materially related to Licensee's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

13.2.

14. **WARRANTY**

- 14.1. The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.
- 14.2. LICENSEE ACKNOWLEDGES AND AGREES THAT CITY DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS ROW OR THE PREMISES SURROUNDING THE SAME, AND LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY THE ROW SUBJECT TO THE PROVISIONS OF THIS LICENSE.

15. **SURVIVAL OF LIABILITY**

All obligations of Licensee and the City hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this License.

16. **PUBLIC EMERGENCY**

- 16.1. The City shall have the right, because of a public emergency, to sever, disrupt, relocate, remove, tear out, dig-up or otherwise damage and/or destroy Licensee's Facilities of without any prior notice to Licensee, if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, Public Works Director, or their designees. In such event, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), or Licensee's customers for any harm so caused to them or Licensee's Facilities. To the extent possible under the circumstances, City will consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Fiber Optic Networks. City shall inform Licensee of any actions taken. Licensee shall be responsible

for repair at its sole expense of any of Licensee's Facilities damaged pursuant to any such action taken by City related to the public emergency.

- 16.2. If any of Licensee's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other City improvements or activities within or outside of the Route, or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety, and/or other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with the City's request to secure the route area, and otherwise cooperate with the City at no expense to the City to remove any such hazard or impediment.
- 16.3. In the event of a public emergency, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), Licensee's customers, or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, contractors or employees in reasonably responding to such public emergency. Where possible, the City will consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or Licensee's Facilities involved.

17. NOTICE

- 17.1. All notices, which shall or may be given pursuant to this License, shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, addressed as follows:

THE CITY
 City of El Mirage
 Attn: City Engineer
 1000 N El Mirage Rd
 El Mirage, AZ 85335
 Phone: (623) 876-2976
 Fax: (623) 876-4605

LICENSEE
 Crown Castle Fiber LLC
 ATTN: Ken Simon, General Counsel
 2000 Corporate Dr
 Canonsburg, PA 15317
 Phone: (724) 416-2000
 Fax:

With copy to:
 El Mirage City Clerk's Office
 Attn: City Clerk
 10000 N El Mirage Rd
 El Mirage, AZ 85335
 Phone: (623) 876-2943
 Fax: (623)-876-4603

With copy to:
 Crown Castle Fiber LLC
 ATTN: SCN Contracts Management
 2000 Corporate Dr
 Canonsburg, PA 15317
 Phone: (724) 416-2000
 Fax:

- 17.2. Notices shall be deemed sufficiently given and served upon the other party the first business day after deposit if sent by private delivery systems and the fifth business day after deposit in U.S. Mail.
- 17.3. 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. Licensee shall notify the City within ten (10) business days of any change in mailing address.

18. TRANSFERABILITY OF LICENSE

- 18.1. This License is personal to Licensee and therefore the rights, privileges and License granted herein shall not be sold, sublet, assigned, conveyed or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold, conveyed or otherwise 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 Licensee, either by act of Licensee or operation of law, without the express written consent of the City, which consent shall not be unreasonably withheld or delayed. Prior to any proposed transfer of any kind becoming final, Licensee shall seek the consent of the City to the proposed transfer. Approval by the City to a transfer does not constitute a waiver or release of any of the rights of the City under the El Mirage City Code or this License, whether arising before or after the date of transfer.
- 18.2. The assignee or transferee as approved by the City shall be equally subject to all the obligations and privileges of this License, including any amendments, which will remain in full effect, as if the assignee or transferee were the original Licensee.
- 18.3. 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 consent under this Section. If the lender does continue operation on any basis at any time, it 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 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 approval shall not be unreasonably denied or delayed. A "lender" as discussed herein does not include a Licensee, person or corporation or other entity that operates cable television systems or telecommunications systems as a principal or important business. This Section 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.
- 18.4. Any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this License. The City may, in its sole discretion and in addition to all other lawful remedies available to the City under this License or otherwise, and in any combination, terminate this License, collect any fees owed from Licensee and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this License. No cure or grace periods shall apply to transfers or assignments prohibited by this License or to enforcement of any provision of this License against an assignee who did not receive the City's consent. Notwithstanding, the above, transfer or assignment to Provider's financially viable parent, subsidiary, successor, or affiliate under common control, shall not require consent and shall be effective upon written notice to the City.

19. **HAZARDOUS SUBSTANCES**

- 19.1. Licensee's and its contractors' activities upon or about the ROW shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental

Response Compensation and Liability Act 42 U.S.C. §§ 9601, et. seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq., or any other federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

19.1.1. Licensee and/or its contractors shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

19.1.1.1. Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the ROW. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery; or

19.1.1.2. Electric backup batteries.

19.1.2. Licensee and/or its contractors shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by the City.

19.1.3. Licensee and/or its Contractors shall not use the ROW in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environment Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this License.

19.1.4. In addition to, and without limitation of any other indemnities or obligations, Licensee shall pay any damages incurred and indemnify, defend and hold the City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW used that is attributable to or caused by Licensee and/or its contractor(s).

19.1.5. Licensee and/or its contractors shall immediately notify the City of any Toxic Substance at any time discovered or existing upon the ROW. Licensee is not responsible for Toxic Substances that may exist at the ROW if Licensee's contractors (and any subcontractors used thereunder) and/or any other persons using the ROW under this License did not do any of the following:

19.1.5.1. Participate in the Toxic Substance coming to the ROW;

19.1.5.2. Fail to immediately report the Toxic Substance to the City;

19.1.5.3. Knowingly participate in spreading or otherwise disturbing the Toxic Substance; or

- 19.1.5.4. Knowingly exacerbate the effects of the Toxic Substance or the difficulty or cost of dealing with the Toxic Substance.
- 19.1.6. Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic Substances containing materials.
- 19.1.7. Within twenty-four (24) hours after any violation by Licensee and/or by its contractors of this License pertaining to Toxic Substances, Licensee shall give the City notice reporting such violation.
- 19.1.8. 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 Licensee's Facilities. The City may contact by telephone the network control center operator at the following phone number 866-236-2824 regarding such problems or complaints, and may use that number in order to reach Licensee at any time for any emergency matter. Licensee shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. Licensee shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence. In addition, Licensee will immediately notify the City if there is a change in the telephone number listed in this Section.

20. MISCELLANEOUS

- 20.1. Complete Agreement. This License, including all Exhibits which are attached, are hereby incorporated into this License and all of which constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral. This License cannot be modified or amended except in writing signed by both parties.
- 20.2. Validity. Licensee shall acknowledge that as a condition of acceptance of this License, Licensee was required to be represented throughout the negotiations of the License by its own attorneys and Licensee had the opportunity to consult with its own attorneys about its rights and obligations regarding this License. Licensee has reviewed City's authority to execute and enforce this License and has reviewed all applicable law, both federal and state, and, after considering same, Licensee acknowledges and accepts the right and authority of the City to execute this License and to enforce the terms herein.
- 20.3. Partial Invalidity. If any section, paragraph, subdivision, clause, phrase or provision of this License shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this License as a whole or any part of the provisions of this License other than the part adjudged to be invalid, unenforceable or preempted. Parties agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the City did not have the authority to issue a License to Licensee under A.R.S. § 9-581 to § 9-583, as amended or succeeded, 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 written 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 the right of termination. If this License shall be considered a revocable permit as provided herein, Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided therein.

- 20.4. Time of Essence. Time is of the essence in each and every provision of this License.
- 20.5. Severability. If any provision of this License shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, the invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this License.
- 20.6. Headings. The headings contained herein are for convenience only and not intended to define or limit the scope of any provision of this License.
- 20.7. No Partnership. Each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other under this License.
- 20.8. No third-Party Beneficiaries. No person or entity shall be a third party beneficiary to this License or shall have any right or cause of action hereunder. The City shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this License (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this License.
- 20.9. Public Records. Notwithstanding any provisions of this License regarding confidentiality, secrets, or protected rights, Licensee acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, Licensee understands that disclosure of some or all of the items subject to this License may be required by law. In the event the City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Licensee, the City agrees to provide Licensee with notice of that request. Within ten (10) days of such notice, Licensee must inform the City in writing of any objection by Licensee to the disclosure of the requested information. In the event Licensee objects to disclosure within the time specified, Licensee agrees to handle all aspects related to the request including properly communicating with the requestor and timely responding with information. Furthermore, Licensee agrees to indemnify and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records. This provision will survive the termination of this License.
- 20.10. Force Majeure. With respect to any provision of this License requiring Licensee to undertake any activity, or the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon Licensee, such failure to undertake any activity, or violation or non-compliance shall be excused where such failure to act, or violation or non-compliance is the result of acts of God, war, terrorist attack, civil disturbance, strike or other labor unrest, or other events, the occurrence of which is beyond its reasonable control.

20.11. Attorneys' Fees. Except as described herein, in the event either party brings any action for any relief, declaratory or otherwise, arising out of this License or on account of any breach or default hereof, the prevailing party is entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will accrue on the commencement of such action and will be enforced whether or not such action is prosecuted through judgment.

20.12. Non-Waiver. Licensee shall not be excused from complying with any of the terms and conditions of this License by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

IN WITNESS WHEREOF, the parties have executed this License as of the date the last party signs.

City of El Mirage
An Arizona municipal corporation

Licensee

By: _____
Alexis Hermosillo, Mayor

DocuSigned by:
By Angela McIntyre
355053FD1EB24E6...

Date: _____

Print Name: Angela McIntyre

ATTEST:

Title: Director West Region Castle

By: _____
Sharon Antes, City Clerk

Date: 7/14/2020 | 4:44:56 PM EDT

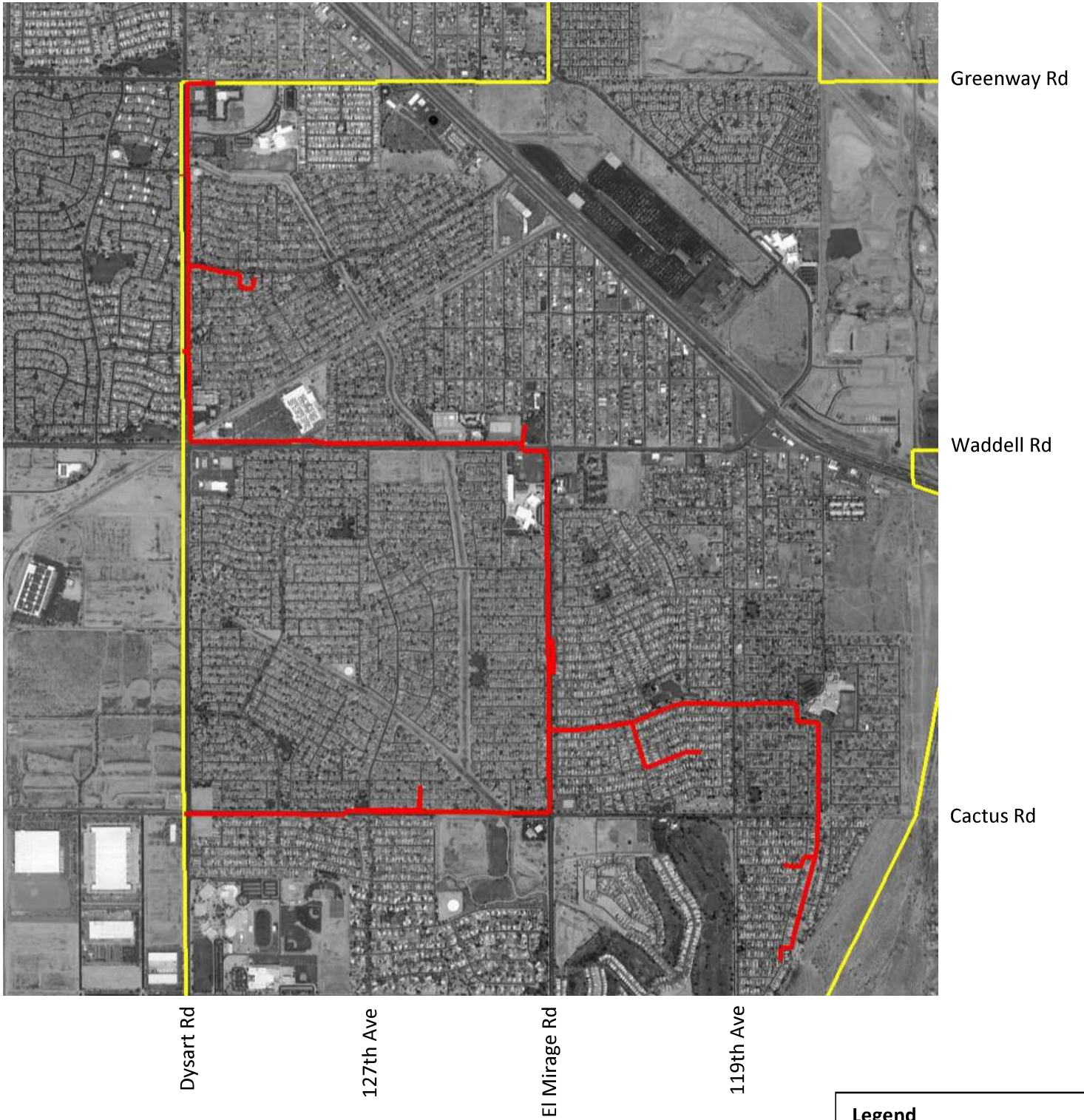
APPROVED AS TO FORM:

By: _____
City Attorney's Office



EXHIBIT A – The Route

Exhibit A

Initial proposed routes and future deployments
within all legal limits of City of El Mirage ROW



Legend

-  City of El Mirage
-  Initial Fiber Routes