

RESOLUTION NO. 24-15

**INTRODUCED BY:
Council Member Arner
Council Member Pearlstein**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS
COLORADO, APPROVING A NON-EXCLUSIVE MASTER LICENSE AGREEMENT
FOR FIBER NETWORKS BETWEEN THE CITY OF FEDERAL HEIGHTS
AND BIF IV INTREPID OPCO LLC**

WHEREAS, BIF IV Intrepid OpCo LLC (“Intrepid”) provides fiber based telecommunications and broadband networks services and desires to install fiber network and equipment in selected rights-of way to serve its customers within the City of Federal Heights (“City”); and

WHEREAS, the City as authorized by Section 15.4 of its Home Rule Charter agrees to permit Intrepid to install its network and equipment within the City subject to a Non-Exclusive Master License Agreement which sets forth the terms and conditions of Intrepid’ s location, placement, attachment, installation, operation, maintenance, relocation and removal of its network and equipment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FEDERAL HEIGHTS, COLORADO:


The Non-Exclusive Master License Agreement for Fiber Networks between BIF IV Intrepid Op Co LLC and the City of Federal Heights is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

INTRODUCED, READ AND ADOPTED this __ day of May 2024.

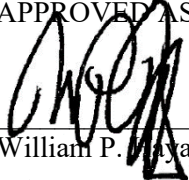
CITY OF FEDERAL HEIGHTS, COLORADO


Linda S. Montoya, Mayor

ATTEST:


Patti K. Lowell, CMC City Clerk

APPROVED AS TO FORM:


William P. Oyashi, City Attorney

CITY OF FEDERAL HEIGHTS

NONEXCLUSIVE MASTER LICENSE AGREEMENT FOR FIBER OPTIC NETWORK

This Master License Agreement (“Agreement”) is dated as of the ____ day of _____, 2024 (the “Effective Date”), and entered into by and between the City of Federal Heights, a Colorado home rule municipality (the “City”), and BIF IV Intrepid OpCo, LLC (the “Company”).

RECITALS

A. City holds good and valid title to the Public Rights of Way (“ROW”) and desires to protect and preserve the ROW. City further maintains police power authority to regulate access to and use of the ROW in a manner that protects the public health, safety and welfare, consistent with Applicable Law.

B. Company is in the business of providing Services to its customers through fiber-based telecommunications and broadband networks, including the network (the “Network”) to be installed in the City, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”) and pursuant to this Agreement. Company expects to install Equipment in a manner designed to ensure all entities located within the jurisdiction of the City are capable of receiving Services. The installation is expected to include roughly _____ feet of underground and aerial fiber optic cable.

C. For purpose of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Right-of-Way (as defined in § 1.6 below) in the locations detailed in Supplemental Sites Licenses as shown on **Exhibit B**.

D. City desires to grant to Company a nonexclusive license (“License”) for the above-stated purpose, upon the terms and conditions contained below, and in accordance with Applicable Law.

AGREEMENT

NOW, THEREFORE, for consideration, the receipt and sufficiency of which is hereby acknowledged, City hereby grants to Company, with respect to such interest as City may have in the ROW, the authorization to install, construct, operate, maintain, repair, inspect, remove and replace the Equipment in, under, or along the ROW, subject to the following conditions:

Section 1. Definitions The following definitions shall apply generally to the provisions of this Agreement.

1.1 “**Applicable Law**” means any statute, ordinance, judicial decision, order (including, without limitation, FCC orders), executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

1.2 “**City**” means the City of Federal Heights, a Colorado home rule municipality.

1.3 **“Claims”** means (1) losses, liabilities, costs and expenses of any sort, including attorneys’ fees; (2) fines and penalties; (3) environmental costs, including, but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other fees and expenses; and (4) any and all other reasonably related costs or expenses.

1.4 **“Equipment”** means electronics equipment, transmission equipment, shelters, conduit, coaxial cables, mounts, generators, containment structures, hangers, pull boxes, conduit, pedestals, brackets, fiber optic cable and other accessories and component equipment related to the operation of Company’s Network.

1.5 **“Hazardous Substance”** means any asbestos or any flammable, explosive, radioactive, hazardous, toxic, contaminating, polluting matter, waste, or substance or related injurious materials, whether injurious by themselves or in combination with other materials, provided, however, janitorial supplies in reasonable quantities which are used in accordance with manufacturer’s instructions and Applicable Laws shall not be deemed a Hazardous Substance.

1.6 **“Installation Date”** shall mean the date that the first Equipment is installed by the Company pursuant to this Agreement.

1.7 **“Network”** or collectively **“Networks”** means one or more of the neutral-host, communication or telecommunication systems operated by the Company to serve its customers in the City.

1.8 **“Public Right-of-Way”** means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks and bicycle lanes, including all public rights-of-way, utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include City parkland, trails, state or federal rights of way, or any property owned by any person or entity other than the City, except as provided by Applicable Laws or pursuant to an agreement between the City and any such person or entity.

1.9 **“Services”** means the telecommunications or broadband services provided through the Network by the Company to its customers. Services also includes the lease of a Network, or any portion thereof, to another person or entity, or the provision of capacity or bandwidth on the System to another person or entity, provided that Company at all times retains exclusive control over the System and remains responsible for locating, servicing, repairing, relocating or removing its System pursuant to the terms of this Agreement.

Section 2. Term This Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years from the date it has been executed by both parties, unless it is earlier terminated by either party in accordance with the provisions herein. Provided, however, that if the Company’s Network is not operational and providing Services to customers within the City within three (3) years of the Effective Date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon thirty (30) days written notice.

Section 3. Scope of Agreement All rights expressly granted to the Company under this Agreement, which shall be exercised at the Company's sole cost and expense, shall be subject to Applicable Law. All rights expressly granted to the Company under this Agreement shall be subject to the City's lawful exercise of its police powers and the prior and continuing right of the City under Applicable Laws to use any parts of the Public Right-of-Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, leases, licenses, permits, franchises, encumbrances, and claims of title of record which may affect the Public Right-of-Way. Except with respect to the License granted herein, nothing in this Agreement shall be deemed to grant convey, create, or vest in the Company a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to, and conform with, Applicable Law. Nothing in this Agreement shall be deemed to grant a franchise, nor permit the City to collect a franchise fee. This Agreement does not grant a Franchise or other right to utilize the Public Right-of-Way to construct a cable system, provide cable or other video programming services, construct a wireless communications facility, or provide wireless communications services. This Agreement will be automatically extended for an additional term of ten (10) years from the expiration date of the current term, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations) at least three (3) years before the expiration of this Agreement. Notwithstanding the expiration of this Agreement, and so as long as the parties are negotiating in good faith, and until such time as either a new agreement has been reached or the City has determined not to renew this Agreement, Company shall have the right to continue to occupy and use the ROW pursuant to the terms of this Agreement.

Section 4. Construction The Company intends to install its Network at the locations set forth on the design plans to be approved by the City and submitted as a request for supplemental site license. The Company shall be required to obtain a supplemental site license for each Equipment location by submitting all information required by **Exhibit A** and using the form attached as **Exhibit B** prior to beginning construction. The City will authorize the Company to commence construction with the grant of a supplemental site license and the provision of all necessary permits, and City's granting or approval applicable to such licenses shall not be unreasonably, withheld, conditioned, or delayed. Approved supplemental site licenses will be attached to this document as part of **Exhibit C**.

4.1 Obtaining Required Permits If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Right-of-Way shall require any permits, the Company shall apply for the appropriate permits and pay any standard and customary permit fees. The City shall respond to the Company's requests for permits in the ordinary course of its business and shall otherwise cooperate with the Company in facilitating the deployment of the Network in the Public Right-of-Way in a reasonable and timely manner. As a condition of obtaining any permit that involves digging or other excavation in the Public Right-of-Way, the Company shall identify the locations of any other existing underground utility or other facilities in the Public Right-of-Way in the proximity of the proposed work area, in accordance with state laws for subsurface utility engineering. Company shall provide construction drawings for permitting purposes, stamped by an engineer that identifies utilities and identifies the location of all Equipment to be installed. Such drawings shall be provided to the City with each request for a supplemental site license. The locations of existing underground utilities within the path of construction shall be physically verified during construction by potholing. For each supplemental site license, Company shall submit construction and traffic control drawings prepared by an engineer licensed in the state of Colorado for review no less than fifteen

(15) business days prior to beginning construction. If revisions to these construction drawings are required by the City, an additional ten (10) business days shall be allotted for review of each set of revised plans. Company shall be allowed to seek permits year-round and all permits granted by City shall stay open for no fewer than twelve (12) months from the date the permit was granted. The Company shall be limited to two (2) active permits for supplemental sites at any time. All work associated with a permit must be completed, including all restoration of pavement, sidewalks, landscaping, and other items, before a permit can be closed and a new permit issued.

4.2 **Fees** In the event that the fees included in City's Right of Way fee schedule are not sufficient to cover the cost of City's review of Company's supplemental site license applications for authorization to install specific Equipment, Company hereby agrees to pay the City any costs that the City incurs to allow the City to recover its actual costs for plan review, engineering and surveying review, prior to and during the permitting process, and for construction observation, inspection and materials testing during the construction process. Should the City elect to utilize an engineering consultant to perform any review or observation duties, the Company hereby agrees to pay that cost, plus a 10% administrative fee, less the applicable fees collected pursuant to the City's permit fee schedule had the work been performed by City staff.

4.3 **Public Infrastructure Security** Company shall provide financial security, in the form of a performance bond, letter of credit (in a form approved by the City), or cash, for the cost to repair or reconstruct all public infrastructure anticipated to be required with any supplemental site license. The Company shall provide an engineer's estimate of the anticipated work for review with the associated supplemental site license, and shall provide security in the approved amount prior to issuance of the supplemental site license and any required construction permit. When all required repairs or reconstruction of public infrastructure has been completed in accordance with City standards, the City shall release the security back to the Company. Should the Company fail to complete the required repairs or reconstruction within a reasonable timeframe in which to minimize impacts to the public, as determined by the City's Director of Public Works or designee, the City may use this security for the sole purpose of completing the repairs or reconstruction.

4.4 **Restoration Security** With each supplemental site license, Company shall provide financial security, as determined by the City, in the form of a performance bond, letter of credit (in a form approved by the City), or cash, which amount is to secure the necessary restoration of areas of private property and privately owned improvements disturbed with the construction. When all restoration work has been completed by the Company, the City shall release the security back to the Company. Should the Company fail to complete the restoration pursuant to the procedure described in Section 4, below, the City may use this security for the sole purpose of completing the restoration work, including reimbursing a third-party property owner who caused such restoration following Company's failure to adhere to the requirements of Section 4. The release of the restoration security by the City does not relieve the Company of any remaining obligations associated with private property restoration, including landscaping or other improvements not owned by the City.

4.5 **Utility Notification Center** Company shall contact the Utility Notification Center of Colorado, <https://www.colorado811.org/>, for location of any underground utilities, and locate the Equipment as required. Company shall use commercially reasonable efforts to

coordinate with City and any affected utilities to undertake locations in accordance with the policies of each entity.

4.6 **Location of Equipment** All Equipment shall be placed a minimum of: (i) Three (3) feet, measured horizontally, from existing and known planned storm sewer, sanitary sewer, and potable and non-potable water lines; and (ii) eighteen (18) inches, measured vertically, above or below, existing and known planned storm sewer, sanitary sewer, and twenty-four (24) inches vertically above or below potable and non-potable water lines and wherever possible at perpendicular crossings. In the event Company is unable install Equipment in accordance with this Section 3.4, or has otherwise determined such placement is not feasible, the Company and City will work collaboratively to determine the location of the Equipment in accordance with the City Code. Equipment shall be placed underground unless attachment is proposed on and available to existing utility poles. No new utility poles shall be installed for the purpose of the Equipment installation. Any Equipment proposed to be located above ground must be screened in the manner approved by the City's Planning Department and the approval of the entity responsible for the maintenance of the property on which the Equipment is located.

4.7 To the extent that Company or any of its contractors cause damage to other utility facilities, if there is damage caused to any major facility, at the discretion of the City, all construction within the City shall cease in order to allow the affected utilities to have the damage repaired. Any contractor of Company that causes damage to another utility's facilities more than two times may be forbidden by the City from doing any further work under this Agreement.

4.8 **Relocation of Equipment** The Company understands and acknowledges that City may require the Company to relocate one or more of its Equipment installations horizontally or vertically. The Company shall at City's direction relocate such Equipment at the Company's sole cost and expense not later than one hundred and twenty (120) days after receiving written notice that the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City facility or Public Right-of-Way; (b) because the Equipment is interfering with or adversely affecting proper operation of street lights, traffic signals, governmental communications networks or other City property; or (c) to protect or preserve the public health or safety. In any such case, City shall use its best efforts (but shall not be required to incur financial costs) to afford the Company a reasonably equivalent alternate location. If the Company shall fail to relocate any Equipment as requested by the City within one hundred and twenty (120) days after the above-referenced notice in accordance with the foregoing provision, City shall be entitled to relocate the Equipment at the Company's sole cost and expense, without further notice to the company.

4.9 **Removal and Abandonment of Equipment**

4.9.1 **Notification of Abandoned Equipment.** If Company intends to discontinue use of any Equipment, it shall notify City in writing of the intent to discontinue use. Such notice shall describe the Equipment for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than thirty (30) days from the date such notice is submitted to the City and the method of removal and restoration. The Company may not remove, destroy or permanently disable any such Equipment during said thirty (30) day period without written approval of City. After thirty (30) days from the

date of such notice, Company shall remove and dispose of such Equipment as set forth in the notice, as the same may be modified by the City, and shall complete such removal and disposal within sixty (60) days, unless additional time is requested from and approved by City. If Company fails to complete this removal work on or before the sixty (60) days subsequent to the issuance of notice pursuant to this Section, then the City, upon written notice to the Company, shall have the right at the City's sole election, but not the obligation, to perform this removal work and charge the Company for the actual costs and expenses, including, without limitation, reasonable administrative costs. The Company shall pay to the City actual costs and expenses incurred by the City in performing any removal work and any storage of the Company's property after removal within sixty (60) days after the date of a written demand for this payment from the City.

4.9.2 Conveyance of Equipment. At the discretion of the City, and upon written notice from City within thirty (30) days of the notice of abandonment, Company may abandon the Equipment in place, and shall further convey full title and ownership of such abandoned Equipment to City in a form acceptable to City. The consideration for the conveyance is City's permission to abandon the Equipment in place. The Company shall be responsible for all obligations as owner of the Equipment, or other liabilities associated therewith, until the conveyance is completed.

4.9.3 Abandonment of Equipment in Place. At the discretion and upon written notice of City, Company may abandon the Equipment in place, but Company still retains the responsibility for all obligations as Owner of the Equipment, or other liabilities associated therewith.

4.9.4 The provisions of the Section shall survive the expiration or earlier termination of this Agreement. Unless removed by the City as set forth herein, the Company may remove its Equipment from the ROW at any time at its discretion, provided that any such removal is in compliance with Applicable Law.

4.10 Damage and Restoration Unless otherwise provided by Applicable Law, whenever the installation, removal, or relocation of any Equipment is required or permitted under this Agreement, and such installation, removal, or relocation shall cause the Public Right-of-Way or any City or other public or private property to be damaged, or whenever Company, in connection with any of its operations, causes damage to the ROW or any other public or private property, the Company, at its sole cost and expense, shall repair or cause to be repaired, the damage and return the ROW or other property in which the Equipment is located and all affected property to a safe and satisfactory condition, as follows: if the City's Director of Public Works determines that any damage poses a risk to the safety and/or health of the public, such damage shall be repaired within 24 hours; any damage to public infrastructure, including roadways, sidewalks, drainage or utility infrastructure, and associated items, or actively operating irrigation systems, shall be repaired within ten (10) days; any other damage to private property shall be repaired within thirty (30) days. If the Company does not repair the damage as described herein, then the City shall have the option, upon fifteen (15) days' prior written notice to the Company, to perform or cause to be performed such reasonable and necessary work on behalf of the Company and to (1) use the Company's Restoration Security to fund such work and (2) charge the Company for the actual costs incurred by the City at City's standard rates, including administrative time. Upon the receipt of a demand for payment by the City, the Company shall promptly reimburse the City for such costs. In the case of fire, disaster or other emergency impacting the public health and safety, the City may remove or

disconnect the applicable Equipment located in the ROW or on any other property of the City. To the extent feasible as a result of any emergency, the City shall provide reasonable notice to the Company prior to taking such action and if the situation safely permits, provide the Company with the opportunity to perform such action within twenty-four (24) hours unless, in the City's reasonable discretion, the imminent threat to public health safety or welfare makes such notice impractical.

Section 5. Other Utilities, Other Service Providers

5.1 Company agrees and understands that if City has permitted or allowed natural gas gathering, storage, transmission, distribution, or related facilities within the ROW, Company has been fully advised by City that such natural gas facilities may now transport and may continue to transport natural gas at significant pressures. Company shall advise all employees, agents, contractors, and other persons who enter upon the Public Rights of Way the existence and nature of such natural gas facilities and the potential danger and risk involved.

5.2 Company agrees and understands that any natural gas facilities, if located within the ROW, may be subject to cathodic protection by rectifier and related anode beds, and that City shall not be liable for stray current or interfering signals induced in the Equipment as a result of the operating of the cathodic protection system.

5.3 Company agrees and understands that if City has permitted and allowed to be constructed electric transmission, distribution, or related facilities within the ROW, Company has been fully advised by City that such electric facilities may now transmit and may continue to transmit electric current at significant voltages, and that the conductors on electric lines may not be insulated. Company shall advise all of its employees, agents, contractors, and other persons who enter upon the Public Rights of Way of the existence and nature of such electric facilities and the potential danger and risk involved.

Section 6. Hazardous Substances Company agrees that Company, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of the ROW in violation of any Applicable Law. Except to the extent of the negligence or intentional misconduct of City, Company shall pay, indemnify, defend and hold City harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Company pursuant to this Agreement. Company shall ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that Company is only using a small portion of the ROW and that Company shall not be responsible for any environmental condition or issue except to the extent resulting from Company's, its agents' or contractors' specific activities and responsibilities under this Agreement.

Section 7. Indemnification Company shall indemnify, defend and hold the City, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage or liability (or any Claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the

Network and any Equipment, or the Company's breach of any provision of this Agreement. Company's indemnification obligations extend to any Claims asserted by any person or entity, including, but not limited to, employees of Company or its contractors, subcontractors, or their employees; and any Claims arising from, or alleged to be arising in any way from, the acts or omissions of Company, its sublessees, invitees, agents, or employees.

7.1 City shall give the Company timely written notice of the making of any Claim or of the commencement of any action, suit or other proceeding in connection with any Claim. In the event such Claim arises, City shall tender the defense thereof to the Company and the Company shall reasonably consult and reasonably cooperate with the City's City Attorney's Office while conducting its defense. City and the Indemnified Party shall cooperate fully therein with Company's legal representative and shall be consulted on any settlements of claims prior to the execution of any settlement agreements.

7.2 If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by Company to represent the City, the Company shall pay for all reasonable expenses incurred by the City as a result of such separate representation; provided, however, in the event separate representation becomes necessary, City shall select its own counsel and any other experts or consultants, subject to the Company's prior approval, which shall not be unreasonably withheld. City's expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants' fees.

Section 8. Insurance

8.1 The Company shall obtain and maintain, at its own cost and expense, at all times during the term of this Agreement (a) Commercial General Liability insurance with a limit of liability of at least of Five Million Dollars (\$5,000,000) per occurrence (combined single limit), for bodily injury and property damage, and Five Million Dollars (\$5,000,000) general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (b) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of at least \$2,000,000; (c) Workers' Compensation Insurance as required by law and employers' liability insurance with limits of \$500,000 bodily injury each accident, \$500,000 disease each employee, and \$500,000 bodily injury disease policy limit. Notwithstanding the foregoing, upon sixty (60) days' prior notice to and review by Company, no more than once every three (3) years, City may increase the aforementioned limits of insurance in its reasonable discretion in order to provide for levels of coverage similar to that required of other rights of way users at that point in time.

8.2 All of the insurance coverages identified in Section 8.1, except the workers' compensation insurance and employer's liability insurance, shall include City as an additional insured as their interest may appear under this Agreement. Each of such insurance coverages shall contain a waiver of subrogation for City's benefit. Further, the insurance coverages identified in Section 8.1 will be primary and noncontributory with respect to any self-insurance or other insurance maintained by City.

8.3 Upon execution of this Agreement and upon any subsequent request of City, Company shall provide City with a Certificate of Insurance and blanket additional insured endorsements evidencing the coverage required by this Section 8.

8.4 All of the insurance policies Company and its subcontractors that undertake trenching, directional boring within the Right-of-Way are required to maintain pursuant to this Section 8 shall be obtained from insurance carriers having an A.M. Best rating of at least A-VII. All other subcontractors shall be subject to reasonably appropriate insurance requirements set by Company which are commensurate with the type of work the subcontractor is performing.

8.5 **Governmental Immunity** The City does not waive any immunities, limitations, provisions, coverages or protections provided it and its officers, officials and employees by the Colorado Governmental Immunity Act C.R.S. 24-10-101 et seq; as same may be amended from time to time..

Section 9. Notices Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

If to the City:
Director of Public Works
2380 W 90th Ave
Federal Heights, CO 80260

and

If to Company:
Chief Construction Officer
11001 120th Avenue, #305
Broomfield, CO 80021

A Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement

9.1 **Emergency Contact.** Company shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring City to take immediate action. Company's 24/7 call center number is: 844-380-8090.

Section 10. Miscellaneous Provisions The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

10.1 A Company representative shall have one copy of the applicable rights of way permit issued for work authorized under any supplemental site license on the Public Right of Way and available during construction of any Equipment.

10.2 **Non-exclusive Use** The parties understand and agree that City permits other persons and entities to install utility facilities in the ROW. In permitting such work to be done by others, City shall not be liable to Company for any damage caused by those persons or entities.

10.3 **Severability of Provisions** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.4 **No Waiver** A party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. Both City and Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither City nor Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

10.5 **Federal and State Authorizations** The Company has obtained all government licenses, permits and authorizations by the Federal Communications Commission which are required in order to provide the Services.

10.6 **Governing Law; Jurisdiction** This Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado. Venue for any proceeding arising out of this Agreement shall be in Adams County.

10.7 **Force Majeure** With respect to any provisions of this Agreement, the violation or noncompliance of any term of this Agreement which could result in the imposition of a financial penalty, damages, forfeiture or other sanction upon a party, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, pandemics, or other events, the occurrence of which was not reasonably foreseeable by such party and is beyond such party's reasonable control, and which was not caused and could not have been avoided by a party which used its best efforts in its operations to avoid such results. If a party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, it shall provide documentation as reasonably required by the other party to substantiate its claim. If that party has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure.

10.8 **Limitation of Liability** Except for indemnification pursuant to Section 8, neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or

interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise,.

10.9 **Representations and Warranties** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

10.10 **No Third-Party Beneficiaries** This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.

10.11 **Public Disclosure** Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, §24-72-202(6), C.R.S., and accordingly may be disclosed to the public.

10.12 **Amendment of Agreement** This Agreement may not be amended except pursuant to a written instrument signed by both parties.

10.13 **Entire Agreement** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. Any prior oral or written agreements or licenses between the parties concerning use of the Public Right-of-Way is superseded by this Agreement.


10.14 This Agreement may be executed in two original counterparts, each of which shall be deemed an original of this instrument.

10.15 All Exhibits to this Agreement are hereby incorporated into this Agreement by reference.

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

SIGNATURE PAGE FOLLOWS.

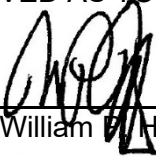
THE CITY OF FEDERAL HEIGHTS

By: 
Linda S. Montoya, Mayor

ATTEST:

By: 
Patti Lowell, CMC, City Clerk

APPROVED AS TO FORM:

By: 
William Hayashi, City Attorney

COMPANY/ LICENSEE:

By: _____

EXHIBIT A

COMPANY SHALL PROVIDE THE FOLLOWING AS IS APPLICABLE TO BE CONSIDERED BY THE CITY IN WHETHER TO GRANT THE SUPPLEMENTAL SITE LICENSE:

1. Plan and profile drawings, engineering design, and specifications for installation of the Facility, including the equipment shelters, cables, conduit, pull boxes, pedestals, fiber runs, point of demarcation, electrical distribution panel, electric meter, electrical conduit and cabling, and all other associated equipment. Where applicable, the design documents shall include specifications on design, traffic control plans and ADA compliance.
 - a. The plot plan shall show existing sidewalk size, existing utilities, existing trees, traffic control signs and equipment, and other existing improvements.
2. The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
3. Description of the utility services required to support the facilities to be installed.
4. A typewritten legal description with (1) the Section, Township and Range, and County being affected, and if it is part of a subdivision, it shall be stated also; (2) the Point of Beginning to an established land corner or to a subdivision plat that is tied to an established land corner, with curves showing radius, delta, arc length and angle to radius point if curve is non-tangent, and area to be included in square feet; and (3) the legal description SIGNED and SEALED by a surveyor registered in the State of Colorado.

ALL SUPPLEMENTAL SITE LICENSE MATERIALS SHALL BE LABELED WITH THE APPLICABLE SUPPLEMENTAL SITE ID NUMBER

THE CITY WILL RETAIN ALL DOCUMENTATION FOR GRANTED SUPPLEMENTAL SITE LICENSES

EXHIBIT B

FORM OF SUPPLEMENTAL SITE LICENSE

SUPPLEMENTAL SITE LICENSE AGREEMENT

THIS SUPPLEMENTAL SITE LICENSE AGREEMENT is entered into this ___ day of _____, 202_ (“Effective Date”) between the City of Federal Heights, Colorado (the “City”) and _____ (“Company”) (collectively, the “Parties”).

Section 1. Supplemental Site License. The City grants to Company a nonexclusive, revocable Supplemental Site License to locate, construct, operate, control and maintain the Equipment, as contemplated and defined in that certain Master License Agreement For Fiber Network in connection with the operation of Company’s Network, between City and Company dated _____, 202_ (the “License Agreement”), within the Right Of Way (“ROW”) (as defined in the License Agreement) segment shown in **Exhibit A**, attached hereto and incorporated herein by this reference (“Equipment Location”).

The grant of this Supplemental Site License indicates that at the time of its execution, Company is materially compliant with all other Supplemental Site Licenses granted by the City for grids which are under construction at time of application or have been completed immediately prior to application. Should Company be in violation of any material term of any Supplemental Site License granted by the City, City shall provide Company written notice of such violation and the City shall have the option to deny Company’s Supplemental Site License applications which are subject to the City’s approval at the time the City informed Company of the applicable violations. In the event the City denies the issuance of new Supplemental Site Licenses pursuant to the provisions of this Section 1, City and Company shall promptly meet and negotiate in good faith to determine the obligations Company must fulfill prior to the issuance of new Supplemental Site Licenses. If Company and City mutually agree on the obligations Company must perform, Company shall promptly undertake performance of such obligations and so as long as Company is diligently pursuing performance and notwithstanding the fact the obligations have not been fulfilled, City shall have the option to commence the issuance of new Supplemental Site Licenses.

Section 2. Incorporation of Agreement. All of the terms and conditions of the License Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the License Agreement. In the event of a contradiction, modification or inconsistency between the terms of the License Agreement and this Supplemental Site License, the terms of this Supplemental Site License shall govern. This Supplemental Site License shall, when executed, be attached as part of **Exhibit B** to the License Agreement. Capitalized terms used in this Supplemental Site License shall have the same meaning described for them in the License Agreement unless otherwise indicated herein.

Section 3. Plan and Profile. Plans and profiles for the construction and installation of the applicable Equipment at the Equipment Location based on City as built drawings and/or GIS information and documenting variances from the standard depth or running line due to conflicts with existing facilities shall be submitted to and approved by the City in writing before beginning any work within the ROW or public utility easements or other easements benefiting the City within the City or installation of such Equipment. Plans in up to 300 roof top increments shall show Company’s drawings of Equipment as compiled in accordance with City’s practices and procedures as they are in effect from time to time, as well as any information required by Applicable Law. “As-Built” drawings with respect to the Equipment will be provided to the City

within ninety (90) days after completion of installation of the applicable grid. Depths of the existing City utilities will be detailed using the existing City GIS records available to Company. If the location and/or depth of the existing City utility is unknown, Company or its contractor will provide locates and/or pothole at the time of Equipment placement and provide a new plan and depth to the City in the form of a redline after construction.

Section 4. Equipment. The Equipment to be installed at the Equipment Location is described in **Attachment 1, Table 1**, attached hereto and incorporated herein by this reference.

Section 5. Term of Supplemental Site License. The term of this Supplemental Site License shall be as set forth in Section 3 of the License Agreement.

Section 6. Commencement Date of Supplemental Site License. The commencement date of this Supplemental Site License is the date Company completes installation of the applicable Equipment at the Equipment Location and receives final approval of the installation from the City ("Installation Date").

Section 7. Approvals. It is understood and agreed the Company's ability to install its Equipment in the ROW is contingent upon its obtaining all of the appropriate certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required under Applicable Law (as defined in the License Agreement), and such approval which shall not be unreasonably withheld, conditioned, or delayed by the City. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) Company determines the Equipment Location is no longer technically compatible or financially feasible for its use, Company shall have the right to terminate all or part of this Supplemental Site License. Notice of Company's exercise of its right to terminate shall be given to the City in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Company, or upon such later date as designated by Company. All standard and customary permit fees paid to said termination date shall be retained by the City. Upon such termination, all or part of this Supplemental Site License, as applicable, shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder and in the License Agreement and the City's obligation to pay any fees which Company may have accrued and which are subject to reimbursement under the applicable Supplemental Site License.

Section 8. Nonliability. Company acknowledges that the City's review and approval of the plans for the Equipment is done in furtherance of the general public health, safety and welfare and that no specific relationship with, or duty of care to Company or third parties is assumed by such review approval, or immunity waived, as is more specifically set forth in the Colorado Governmental Immunity Act.

Section 9. Hold Harmless. Company agrees to indemnify, defend and hold the City harmless from any claims brought by any third party against the City which are attributable to any act of Company, its employees, agents, contractors, subcontractors, and consultants with respect to: (i) the construction and installation of the Equipment at the Equipment Location; and (ii) any activities undertaken pursuant to this Supplemental Site License. This indemnification does not extend to claims of willful misconduct or negligence brought by any third party against the City which is attributable to any act or omission of the City.

Section 10. Notice and Communications. All notices, requests, and demands to or


upon any party to this Supplemental Agreement shall be in writing addressed to the person designated below for the Parties at the indicated address. A Party may by notice in writing change its address for the purpose of this Supplemental Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery via electronic mail or otherwise, or (iii) one business day after deposit with any recognized commercial air courier or express service.

<u>Company</u>	Chief Construction Officer 11001 W. 120 th Ave, Suite 305 Broomfield, CO 80021
<u>City</u>	<u>Director of Public Works</u> <u>2380 W 90th Ave</u> <u>Federal Heights, CO 80260</u>

Section 11. Governmental Immunity. The City and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Supplemental Site License, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

Section 12. Incorporation of Exhibits. All Exhibits to this Agreement are hereby incorporated into this Agreement by reference.

CITY OF FEDERAL HEIGHTS, COLORADO:




Jacquie Halburnt, City Manager

ATTEST:



Patti K Lowell, CMC, City Clerk

APPROVED AS TO LEGAL FORM:



William P. Hayashi City Attorney

