

**PUBLIC WORKS MEMORANDUM
#10-2024**

DATE: Feb. 12, 2024

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager *hmg*
Jason Loveland, Deputy City Manager *AL2*

FROM: Kent Kisselman PE, Director of Public Works *FKK*

SUBJECT: CR-53 – Intrepid License Agreement Assignment

PURPOSE

To consider CR-53, a resolution approving the assignment of a license agreement between BIF IV Intrepid OpCo LLC and the City to Intrepid Northglenn LLC.

BACKGROUND

On September 26, 2022, the City granted a license agreement to BIF IV Intrepid OpCo LLC to install a fiber network to provide internet services throughout the community. BIF IV Intrepid OpCo LLC has undertaken a new debt facility to assist with the build out of their fiber network in Northglenn. As part of this financing, they are required to set up a new legal entity structure and assign the existing license to the new entity.

Due to the formation of the new entity, it is necessary for Council to assign the license agreement to Intrepid Northglenn LLC.

BUDGET/TIME IMPLICATIONS

There are no impacts to time or budget.

STAFF RECOMMENDATION

Attached to this memorandum is CR-53, a resolution that, if approved, would authorize the Mayor to assign the BIF IV Intrepid OpCo LLC license agreement to Intrepid Northglenn LLC. Staff recommends approval of CR-53.

STAFF REFERENCE

If Council Members have any questions, please contact Kent Kisselman, Director of Public Works, at kkisselman@northglenn.org or 303.450.4005.

CR-53 – Intrepid License Agreement Assignment

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S RESOLUTION

RESOLUTION NO.

No. CR-53
Series of 2024

Series of 2024

A RESOLUTION APPROVING THE ASSIGNMENT OF THE LICENSE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND BIF IV INTREPID OPCO LLC TO INTREPID NORTHGLENN LLC

WHEREAS, the City of Northglenn and BIF IV Intrepid OpCo LLC ("the Licensee") entered into a License Agreement dated September 26, 2022 (the "License Agreement"), which granted the use of certain public rights-of-way within the City of Northglenn to construct, install, operate, and maintain the Licensee's facilities in order to provide telecommunication services; and

WHEREAS, the Licensee desires to assign the License Agreement to Intrepid Northglenn LLC, and such assignment requires the authorization of the Northglenn City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby approves the Assignment and Assumption Agreement for the License Agreement between the City of Northglenn and BIF IV Intrepid OpCo LLC to Intrepid Northglenn LLC, attached hereto, and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this _____ day of _____, 2024.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, MMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

ASSIGNMENT AND ASSUMPTION

KNOW THAT BY THIS ASSIGNMENT AND ASSUMPTION (this “**Assignment**”) BIF IV Intrepid OpCo LLC, a Delaware limited liability company, having an address at 11001 W 120th Ave, Ste 305, Broomfield, CO 80021-3493 (“**Assignor**”), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, sells, transfers, delivers, sets-over and conveys to Intrepid Northglenn LLC, a Delaware limited liability company, having an address at 11001 W 120th Ave, Ste 305, Broomfield, CO 80021-3493 (“**Assignee**”), all right, title and interest and obligations of Assignor in, to and under or arising out of:

(a) those documents set forth in Exhibit A entered into with the City of Northglenn, a Municipal Corporation (“**Counterparty**”), and attached hereto and made a part hereof (the “**Document**”);

(b) all guaranties, insurance policies, indemnifications, releases, affidavits, certificates, certificates of deposit, performance bonds, letters of credit and other documents, reports, opinions, agreements and instruments executed and/or delivered in connection with the Document;

(c) all assignments and/or pledges, whether direct or collateral, beneficial or equitable interests, proceeds, royalties, contracts, plans, specifications, permits, licenses, reserves, holdbacks, escrows, deposits, accounts, stocks, bonds and securities in connection with the Document;

(d) all modifications, amendments, consolidations, renewals, extensions or restatements of any of the foregoing; and

(e) all demands, claims, causes of action and judgments relating to any of the foregoing and all rights accrued or to accrue thereunder.

Assignee hereby accepts the foregoing assignment and assumes all of the rights and obligations of Assignor arising after the date hereof out of the Document and other interests so assigned.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.

Except as provided explicitly below, this Assignment is made by Assignor and assumed and accepted by Assignee without any guarantee, representation or warranty of any kind on the part of Assignor and without recourse to Assignor in any event or for any cause. Assignor hereby warrants and represents to Assignee that:

(a) Prior to the execution hereof, Assignor has not sold, transferred, assigned, conveyed, pledged or endorsed any right, title or interest in the Document to any person or entity other than Assignee; and

(b) Assignor has full right and power to sell and assign the same to Assignee subject to no agreement with any party other than Assignee.

Counterparty hereby acknowledges and agrees that, on and from the date of this Assignment:

(a) Counterparty shall perform its obligations under the Document for the benefit of the Assignee in the same manner as such performance would be required thereunder for the Assignor; and

(b) Counterparty shall accept performance under the Document by Assignee in the same manner as if such performance would have been rendered by the Assignor.

This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Whenever the context so requires in this Assignment, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed to include a natural person, a corporation, a firm, a partnership, a joint venture, a trust, an estate or any other entity.

Each provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Assignment or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Assignment, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

Assignor hereby agrees to execute such other assignments, instruments and other documents as Assignee may reasonably request in confirmation of, and/or in furtherance of, the assignment made hereunder.

THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF COLORADO.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Assignor, Assignee and Counterparty have duly executed this Assignment as of the _____ day of _____, 2024.

ASSIGNOR:

BIF IV Intrepid OpCo LLC,
a Delaware limited liability company

By: _____
Name:
Title:

ASSIGNEE:

Intrepid Northglenn LLC,
a Delaware limited liability company

By: _____
Name:
Title:

COUNTERPARTY:

**City of Northglenn,
a Municipal Corporation**

By: _____
Name:
Title:

Exhibit A

Document

1. License Agreement, dated as of September 26, 2022, by and between the City of Northglenn and BIF IV Intrepid OpCo LLC.

EXHIBIT A
LICENSE AGREEMENT

THIS AGREEMENT is entered into this 26th day of September, 2022, by and between the City of Northglenn, a Municipal Corporation (hereinafter referred to as "City") and BIF IV Intrepid OpCo LLC (hereinafter referred to as "Licensee").

WITNESSETH:

WHEREAS, City is a Colorado home rule city organized and existing under and by virtue of Article XX of the Colorado Constitution and possesses plenary power and authority over the use and occupation of the public rights of way within its corporate boundaries; and

WHEREAS, Licensee represents and warrants: (a) that it is a Telecommunications Provider" as that term is defined in Section 7 of Article I; and (b) that it operates within the geographical boundaries of the City of Northglenn; and

WHEREAS, Licensee provides its Telecommunications Services to customers over a network owned, controlled, or leased by Licensee which lines are authorized pursuant to franchise, license agreement or revocable permit; and

WHEREAS, Licensee may wish to install Facilities upon or within certain public rights of way within the corporate boundaries of the City in order to provide Telecommunications Services; and

WHEREAS, City is authorized under the constitution and laws of the State of Colorado to grant consent to Telecommunications Providers to occupy the public rights of way for such purposes; provided, however, the same shall not be nor constitute the granting of a local franchise under Article XI of the City of Northglenn Home Rule Charter (the "Charter"), nor shall same ever become or ripen into any franchise; and

WHEREAS, the City and Licensee have agreed to be bound by the terms and conditions set forth herein which shall govern Licensee's use of the public rights of way;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and mutual promises set forth herein, the parties agree as follows:

ARTICLE I - DEFINITIONS

As used in this License Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this License Agreement, the word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this License Agreement.

1. "Telecommunications Act" shall mean the Telecommunications Act of 1996 (47 U.S.C. §151, et seq.), as amended.

2. (a) "Facilities" means all physical components of the Licensee used to provide Telecommunications Services which are located, or to become located pursuant to this License Agreement, within the City and are reasonably necessary, useful or convenient to provide Telecommunications Services within the territorial boundaries of the City, including without limitation, poles, wires, cables, pipes, underground conduits, ducts, manholes, vaults, fiber optic cables and devices, switches, equipment boxes and sheds and other structures and appurtenances. This term shall also include any Facilities which were installed under the any prior License Agreement between the City and Licensee.

(b) "Leased Facilities" means all physical components used by Licensee to provide Telecommunications Services which are leased to Licensee by third parties who are authorized by separate instruments to maintain same within Rights of Way within the City.

3. "Account" shall mean each telephone or telecommunications access line or twisted pair equivalent provided by or on behalf of Licensee, if Licensee provides any type of local exchange service, at a customer's premises over which the customer may send or receive any telephone, telegraph, fax, data, video or other similar telecommunications signals; except that "Account" shall not include any customer line used solely for receipt of cable television programming. Provision of a T1 or DS1 line furnished by Licensee to a customer which is connected to switched access service or local exchange service shall be counted as twenty-four (24) accounts; provision of a T3/DS3 shall be counted as six hundred seventy-two (672) accounts.

4. "Jurisdiction" shall mean within the corporate boundaries of the City of Northglenn as now or hereafter constituted.

5. "Rights of Way" shall mean any public street, way, place, alley, sidewalk, trail, path, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use consistent with Article 2 of Chapter 16 of the Northglenn Municipal Code .

6. "NMC" shall mean the Municipal Code of the City of Northglenn, as amended, and as same may be amended in the future.

7. "Telecommunications Provider" shall (1) have the meaning as that term is defined under Colorado and federal law, including but not limited to § 38-5.5-102(3), C.R.S. and 47 U.S.C. § 153(51) and (2) also include, solely for the purposes of this Agreement, the term "broadband provider" as that term is defined in § 38-5.5-102(1.3), C.R.S., except that for purposes of this Agreement this term shall not include a cable operator.

8. "Telecommunications Services" shall (1) have the meaning as that term is defined under Colorado and federal law, including but not limited to 47 U.S.C. § 153(53) and (2) also include, solely for the purposes of this Agreement, the term "broadband service" as that term is defined in § 38-5.5-102(1), C.R.S., except that for purposes of this Agreement this term shall not include cable services.

9. "Wireless Communications Facility" or "WCF" means a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

ARTICLE II - CONDITIONAL CONSENT GRANTED

1. Subject to Licensee's compliance at all times with all of the terms and conditions of this License Agreement, all of the ordinances referenced herein, all applicable local, state and federal laws, and further subject to the City's lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit and building code requirements) and the City's prior and superior right to usage for municipal purposes, City hereby grants to Licensee, insofar as it has or may have the requisite power and authority to do so, a non-exclusive license to make reasonable use of the Rights of Way to construct, install, operate and maintain Licensee's Facilities within the City to and for the benefit of the City and the inhabitants of the City; provided, however, that with respect to state highways, Licensee must separately obtain consent from the Colorado Department of Transportation.

2. The license granted herein to make reasonable use of the Rights of Way shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right to make or grant a similar use of the Rights of Way to any other person or persons, including one or more other Telecommunications Providers.

3. The City retains the following rights in regard to this license:

(a) To revoke the license and consent hereby granted for misuse, non-use or failure of Licensee to comply with the provisions hereof;

(b) To use, control and regulate the use of the City streets, roads, easements, other public places and the Rights of Way, and the space above and beneath the same;

(c) To require the removal or relocation of any of the Facilities from the Rights of Way if necessary or desirable for any public or municipal purpose or project, as determined at the sole discretion of the City, which judgment must be exercised in a reasonable manner; and

(d) To require a separate permit for each site or excavation upon which Licensee would otherwise be required to obtain such a permit under Article 2 of Chapter 16 of the NMC .

4. The license granted herein to make reasonable use of the Rights of Way shall not be deemed to grant authorization to construct or operate Wireless Communications Facilities.

Authorization to utilize the Rights of Way for Wireless Communications Facilities must be obtained through separate authorization specifically permitting the use of the Rights of Way for Wireless Communications Facilities.

ARTICLE III - SCOPE

The license and consent granted by this License Agreement confers only the right to make reasonable use of the Rights of Way for Licensee's provision of Telecommunications Services, and it is expressly understood and agreed to by Licensee that Licensee shall not operate a private telecommunications network, Wireless Communications Facilities, nor operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer to provide "cable services" as that term as defined under federal law (47 U.S.C. §522(6)), without proper local, state and federal authorization, as required by law.

ARTICLE IV – FEES

1. **Annual License Fee** – In addition to any building permit fees or right-of-way permit fees required by the City, the Annual License Fee shall be as provided in the following table depending on the type of facility installed by Licensee:

Type of Facility:	Annual License Fee:
Wireless Communication Equipment on a pole or other above-ground facility owned by Licensor	\$200.00/pole
Equipment Placed Underground	The City's standard underground utility rate to offset the cost of City review

2. Licensee shall pay in advance to Licensor the Annual License Fee for the coming year for each facility for which a permit has been obtained under Article 2 of Chapter 16 of the NMC. The Annual License Fee for all such permitted sites installed during any given month will commence and be due on the first day of the following month (the "License Fee Commencement Date").

3. **Payment of Fees to Licensor** – Licensee shall pay Licensor the Fees specified in this Section in the form of a money transfer or a check made out to the order of the City of Northglenn City and sent to:

City of Northglenn
Attn: Finance Director
11701 Community Center Drive
Northglenn, Colorado 80233-8061

ARTICLE V - OCCUPATION TAX & E911 SURCHARGES

1. To the extent Licensee operates as a local exchange provider, as defined by §40-15-102(18), C.R.S. and/or as an interexchange provider, as defined by §40-15-102(11), C.R.S the following provisions shall apply:

(a) Licensee understands and acknowledges that City had heretofore adopted a Telephone Occupation Tax as codified in Article 5 of Chapter 5 of the NMC. In its provision of local exchange services, whether directly or through resale, Licensee agrees to be bound by and comply with said Ordinance, including payment of the tax in an amount equal to \$____ per annum for each Account, payable quarterly in equal installments. In providing local exchange services, Licensee hereby expressly agrees that it is and constitutes a telephone utility within the meaning of Article 5 of Chapter 5 of the NMC and Licensee irrevocably waives and relinquishes any right it has or may have to claim or assert that said NMC provisions are invalid under law or should not be applied to Licensee, including, without limitation, any claim that said provisions violates any provision of state law or the Telecommunications Act.

(b) The City has imposed an emergency telephone charge ("E911 Charge") of _____ per month per exchange access facility, wireless communications access and interconnected voice-over-internet-protocol service provided within the Jurisdiction, as authorized by §29-11-100.5, et seq., C.R.S. Licensee agrees to collect the E911 Charge from its customers and promptly remit same monthly to City as provided by §29-11-103(1), C.R.S.

ARTICLE VI - SALES AND USE TAXES

1. Licensee agrees to obtain a sales and use tax license from the City and to comply with all provisions of Article 3 of Chapter 5 of the NMC relating to sales and use taxes.

2. Licensee acknowledges and agrees that to the extent Licensee sells telecommunications services to customers within the City, including the provision of interstate telephone access service and interlata access service, such service is taxable by City pursuant to Article 3 of Chapter 5 of the NMC, and Licensee shall collect such taxes from its customers and promptly remit same to the City in accordance with Article 3 of Chapter 5 NMC.

ARTICLE VII - USE OF RIGHTS OF WAY

1. Facilities shall be located, installed and maintained so that none of the Facilities endanger the lives, health or safety of persons, or interfere with any public improvements the City or other governmental entities (including any storm water, sanitary sewer or water utilities or

enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Facilities hinder or obstruct the use of the streets or other public ways for their public purposes, including but not limited to vehicular and pedestrian traffic. All Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. Prior to commencement of construction of any portion of its telecommunications system within the City (other than Leased Facilities), Licensee shall furnish to the City the general schematic plans for its Facilities, including system route maps, renderings of equipment boxes and structures, engineering, traffic control, and landscaping plans. In addition, the Licensee shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure, (a) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (b) that aesthetic and good planning principles have been given due consideration, and (c) that adverse impact on the environment has been minimized. The Licensee shall comply with all regulatory requirements of the City lawfully binding on the Licensee and shall incorporate all other reasonable changes to its plans requested by the City, consistent with the provisions of Article 2 of Chapter 16 of the NMC.

3. Not less than thirty (30) days prior to construction of any Facilities within the Rights of Way at any specific location, Licensee shall furnish the City's Director of Public Works with detailed plans for such Facilities including detailed location drawings and final architectural, engineering, traffic control and landscaping plans. Prior to commencing construction, Licensee shall: (a) obtain written approval of the City Engineer as defined by Article 2 of Chapter 16 of the NMC of the construction plans, (b) procure appropriate excavation permits pursuant to Article 2 of Chapter 16 of the NMC, NMC, and permits required by Article 2 of Chapter 16 of the NMC, NMC, or permits required pursuant to any similar ordinance adopted by City in the future, (c) pay all review fees associated with such permits in addition to the fees set forth in Article IV of this Agreement, and (d) comply with all requirements of said Article 2 of Chapter 16 of the, NMC, including the terms of said permits.

4. All construction, excavation, maintenance and repair work done by Licensee shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to the City, the general public and individuals. Licensee shall be liable for any damage to the City or City owned property caused by Licensee's failure to act in a timely manner. All such construction, excavation, maintenance and repair work done by Licensee shall comply with all applicable codes of the City and the State of Colorado, and Licensee shall be responsible for obtaining all applicable permits and licenses. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes and permits, and may order Licensee to perform corrective work. All public and private property disturbed by Licensee's activities shall be promptly restored by Licensee at its expense to substantially its former condition, subject to inspection by the City Engineer or their designee and compliance by Licensee with reasonable remedial action required by said official pursuant to the inspection. Licensee shall be liable to City

for the full cost of restoring any public property not promptly remedied by Licensee as required by said official.

5. The installation, maintenance, renovation and replacement of Facilities by Licensee shall be subject to regulation by City including as to (a) the location of Facilities in or upon the streets, alleys and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, streetlights, traffic signals, and all other municipal or authorized public use of the Rights of Way. The City Engineer may direct and require Licensee to locate its Facilities within a defined telecommunications corridor within any street or other Right of Way or otherwise at a specific location to minimize interference with other facilities or utilities. Licensee shall install and maintain its Facilities in such manner as to minimize interference with trees, natural features and vegetation. Whenever feasible, Licensee shall enter into pole-sharing and conduit-sharing agreements with third parties in order to co-locate its wires and cables upon poles or within conduit of other Telecommunications Providers or utilities.

6. Licensee shall, upon reasonable notice and at its sole cost and expense, remove, locate and relocate its Facilities in, on, over or under any Rights of Way in such manner as City may at any time require for the purpose of facilitating the construction, reconstruction, maintenance, repair, or change in grade of any street, sidewalk, public improvement or City project, or for the purpose of promoting the efficient operation of any such public improvement or project, or for the purpose of facilitating the vacation and/or redevelopment of Right of Way by the City. In the event Licensee fails to act within a reasonably allocated time, the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to City for the costs thereof. In the event City causes Licensee's Facilities to be relocated, City shall be held harmless for any damages incurred to Licensee's Facilities during such relocation.

7. Except where specifically authorized by the City Engineer, all of Licensee's Facilities located within Rights of Way shall be located underground. In locations where wires or cables of franchisees of City or of authorized local exchange carriers are presently located above-ground, the City Engineer will allow Licensee's Facilities to also be located above-ground unless the City Engineer has specific reasons for not allowing above-ground installation at such location. Thereafter, and notwithstanding that any such authorization had been given, should the City subsequently determine for any area of the City that telephone or telecommunications wires, cable television cables or electric utility wires located above ground shall be relocated underground, Licensee shall, upon reasonable notice, at its sole cost and expense, relocate its Facilities below ground in cooperation with other affected interests. In the event Licensee fails to act within a reasonable allocated time the City may cause Licensee's Facilities to be relocated, and Licensee shall be liable to City for the costs thereof. In the event City causes Licensee's Facilities to be

relocated, City shall be held harmless for any damages incurred to Licensee's Facilities during such relocation.

8. In addition to any other notice obligations required by ordinances of the City, if Licensee is utilizing an easement dedicated to public use as described in the definition of "Public right-of-way" in Section 16-2-2(q) of the NMC, Licensee shall provide at least forty-eight (48) hours' advance written notice of the presence of representatives of Licensee for the construction, inspection or other physical presence of representatives of Licensee to any private property through which such an easement dedicated to public use crosses.

9. Licensee shall provide the City on an annual basis by November 30 of each calendar year a report providing the City with the location of all of Licensee's Facilities installed pursuant to this Agreement as of the date of such annual report. Upon completion of the installation of Licensee's Facilities as set forth herein, Licensee shall provide the City with a map identifying the locations of all of Licensee's Facilities and Licensee's completed system within the City.

10. After execution of this Agreement, Licensee shall join and associate with the notification association of owners and operators of underground facilities in accordance with the requirements of Article 1.5 of Title 9, Colorado Revised Statutes. Prior to undertaking any excavation within the Rights of Way, Licensee shall comply with the notice requirements of said Article.

ARTICLE VIII - ADDITIONAL CITY REGULATION

1. The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such Charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property.

2. If, during the term of this License Agreement, the City is authorized pursuant to Colorado Law to collect compensation for use of the Rights of Way by Telecommunications Providers and the City enacts an ordinance concerning the use of Rights of Way which requires compensation for the use of the Rights of Way from any class of Telecommunications Providers on a competitively neutral and nondiscriminatory basis within such class, then Licensee shall, in accordance with the terms of such ordinance, pay such compensation.

ARTICLE IX - COORDINATION AND CONDUIT/POLE SHARING

1. In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, Telecommunications Providers and other interests needing to locate or maintain facilities in the Rights of Way for the benefit of the public, it is imperative that pole sharing and conduit sharing

be encouraged to the greatest extent possible. In furtherance of such purposes, Licensee agrees that it shall reasonably cooperate with City, authorized utilities and other local exchange carriers in placing conduit within the Rights of Way and in sharing unused space within underground conduits owned by Licensee, and upon poles or other above ground facilities owned by Licensee.

2. Whenever the Licensee intends to install new underground conduit or replace existing underground conduit in a build greater than 500 feet in length, Licensee shall, whenever feasible, provide City and all utilities, cable television franchisees, authorized Telecommunications Providers, and local exchange carriers authorized to use the Rights of Way, with sixty (60) days advance written notice in order to permit the additional contemporaneous installation of conduit by City, and such utilities, cable television franchisees, authorized Telecommunications Providers, and local exchange carriers. If City desires additional conduit installed, it will so notify the Licensee and the City shall be responsible for the additional incremental expense for installing such additional conduit. If a utility, cable television franchisee, authorized Telecommunications Provider, or local exchange carrier desires additional conduit installed, it will so notify the Licensee in writing at least ten (10) days prior to the proposed construction date, and such party requesting the additional conduit shall be responsible for a pro-rata expense for installing such additional conduit. This section is intended to maximize the coordination of facilities located within rights of way, and is not intended to govern routine connections of customers to installed network not involving significant line extension nor other excavations of limited scope.

3. Notwithstanding anything to the contrary in paragraph 2 of this Article, in order to minimize disruption to the public and enable use of the public rights of way for public purposes, in connection with any installation of underground conduit by Licensee, City may request Licensee to install one additional conduit for exclusive use by City for public and municipal purposes. In any such case, Licensee shall install the conduit as requested and the City shall reimburse Licensee only for the cost of the conduit and associated handholes and pull boxes for the conduit, and for the additional incremental expense for installing such additional conduit, handholes and pullboxes.

ARTICLE X - INDEMNIFICATION

1. Licensee shall install, construct, maintain and operate its telecommunications system in a safe manner providing reasonable protection against injury or damage to any and all persons or property. Licensee specifically agrees to indemnify, defend and hold City harmless from all claims, costs, demands, suits, reasonable expert witness and attorneys' fees, court costs, and other reasonable costs of defense and judgments to the extent the same arise from, in whole or in part, Licensee's negligent acts or omissions of failure to comply with the provisions of this License Agreement, and from all damages or penalties to the extent arising out of the installation, construction, operation, or maintenance of Licensee's telecommunications system, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License Agreement, except to the extent such damages or penalties result from the negligent acts or omissions or

intentional or willful and wanton misconduct of the City. City shall not be liable for, and Licensee shall indemnify, defend and hold the City harmless from all costs, damages and claims to the extent arising from or relating to delay by Licensee in performing its obligations hereunder, for any cause whatsoever, except for the negligent acts or omissions or intentional or willful and wanton misconduct of the City, other users of the Rights of Way, or a force majeure event. Licensee shall have sole control over the defense, investigation and settlement of any such claims, however, Licensee shall not enter into any compromise or settlement which imposes any obligation or liability on the City without the prior written consent of the City. In the event Licensee fails to timely assume the defense of any such claim which has been properly and promptly tendered to Licensee. Licensee also hereby agrees to pay all reasonable expenses of the City incurred by the City in defending itself with regard to any such damages, claims or penalties, including all out-of-pocket expenses, reasonable attorney' fees, and the reasonable value of any services rendered by the City Attorney, his assistants, or any employees of the City (collectively "Expenses"), but shall not be required to pay for any Expenses that are in excess of any settlement or compromise which was rejected by the City.

2. The City will provide notice to the Licensee of the pendency of any claim or action against the City arising out of the operations of the Licensee, the exercise by the Licensee of its rights under this License Agreement or the performance thereof by the Licensee. The Licensee shall thereafter be required to appear and defend any such claim or action. Nothing herein stated shall limit the Licensee's obligation of full indemnification of the City hereunder.

ARTICLE XI - INSURANCE

Prior to commencement of any installation of Facilities under this License Agreement, Licensee shall procure and thereafter continuously maintain, for as long as this License Agreement remains in effect, at Licensee's expense, Commercial General Liability ("CGL") insurance written on ISO form CG 00 01 01 96, or a substitute form providing equivalent coverage, with a limit of not less than \$2 Million per occurrence, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this License Agreement shall be defined as an insured contract. The policy shall identify the City as an additional insured, shall contain a waiver of right of subrogation against City and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse and underground property damage hazards. A certificate of insurance shall be filed with the City's Director of Finance prior to commencement of installation of Facilities, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to City prior to cancellation or material change of any insurance referred to therein. In the event the certificate states that it confers no rights upon the certificate holder, the City may require Licensee to furnish a complete copy of the policy including all declarations and endorsements.

ARTICLE XII - TERM

Unless sooner terminated as provided herein, the term of this License Agreement shall be for a period of five (5) years from and after the date of the Agreement. The Parties may mutually agree in writing to renew this Agreement at expiration of the initial term.

ARTICLE XIII - REMEDIES, TERMINATION, REMOVAL

1. In the event of any breach of the terms of this License Agreement by Licensee, City shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one (1) or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one or more of them constitute any bar or limitation to the exercise of any other: (a) specific performance or injunctive relief, (b) monetary damages, and (c) termination. In the event City is required to commence an action to enforce its rights under this License Agreement or to obtain remedies provided above and the party which substantially prevails therein, shall be entitled to recover its costs, including reasonable attorneys' fees and expert witness fees.

2. Before terminating the License Agreement for cause on account of any default by Licensee, City shall provide Licensee with written notice of the default and afford Licensee a reasonable period in which to cure the default.

3. In the event Licensee abandons the telecommunications system installed under the terms of this License Agreement or a certain part thereof or fails to use it for a period of one (1) year, or in the event the term of this License Agreement expires, or the Agreement is terminated or is canceled for any reason, then Licensee shall remove its telecommunications system, or the abandoned portions thereof in the case of a partial abandonment, at its expense. As an alternative to removal, if mutually agreed to by Licensee and the City, the ownership of the telecommunications system (or abandoned portions) may be transferred to the City, in which event, all obligations and liabilities of Licensee under this Agreement in connection with the portion of the telecommunications system so transferred to the City shall terminate.

4. Licensee may cancel this Agreement at any time, as described below, upon ninety (90) days' written notice to the City, subject to the indemnification requirements of this Agreement, the removal provisions set forth in Section 3 above, and any other provisions that survive the termination of this Agreement.

ARTICLE XIV - NOTICES

Except as otherwise provided herein, notice under this License Agreement shall be deemed sufficient if provided in writing and mailed by US certified mail, return receipt requested or delivered by a nationally recognized courier, and shall be deemed effective upon actual receipt o

If to the City: City of Northglenn
12301 Claude Court
Northglenn, CO 80241
Attention: Engineering

with a copy to: City of Northglenn
11701 Community Center Drive
Northglenn, CO 80233
Attention: City Attorney

If to Licensee: BIF IV Intrepid OpCo LLC
2033 11th St., Suite 5
Boulder, CO 80302
Attention: Jack Waters

with a copy to: Brookfield Infrastructure Partners
181 Bay Street, Suite 300
Toronto, Ontario, M5J 2T3
Attention: Fernando Martinez-Caro

ARTICLE XV - EFFECT OF MORE FAVORABLE LICENSE AGREEMENTS

In the event that any wireline Telecommunications Provider offering Telecommunications Services , other than cable services, for a fee to the public, or to such classes of users as to be effectively available to the public is granted consent to use the City's Rights of Way pursuant to terms and conditions which, if applied to Licensee, would be more favorable than those included herein, Licensee shall notify City of such terms and conditions and Licensee shall have the option to renegotiate with City with respect to such terms and conditions.

ARTICLE XVI - SUCCESSORS AND ASSIGNS

This License Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this License Agreement shall confer rights or benefits upon any person not a party hereto.

ARTICLE XVII - SIGNATURES

The persons signing this License Agreement on behalf of Licensee represent and warrant that such persons and Licensee have the requisite power and authority to enter into, execute and deliver this License Agreement and that this License Agreement is a valid and legally binding obligation of Licensee enforceable against Licensee in accordance with its terms. This License Agreement may be executed in one or more counterparts, each of which shall be deemed an

original, and all of such components together shall constitute one and the same instrument.

ARTICLE XVIII - FORCE MAJEURE

Neither party shall be liable for its failure to perform any of its obligations hereunder if such failure is caused by an Act of God, labor strike, fire, earthquake, power blackouts, pandemics, epidemics, or any other cause beyond its reasonable control and without its fault or negligence.

ARTICLE XIX- LAWS GOVERNING/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in Adams County, Colorado.

ARTICLE XX - COUNTERPARTS; ELECTRONIC DISPOSITION

This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

ARTICLE XXI - PUBLIC DISCLOSURE

The Licensee acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-200.1 *et seq.* as same may be amended, and accordingly may be disclosed to the public.

ARTICLE XXII - AMENDMENT

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

ARTICLE XXIII - ENTIRE AGREEMENT

This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing

which makes specific reference to this Agreement and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

IN WITNESS WHEREOF, Licensee and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

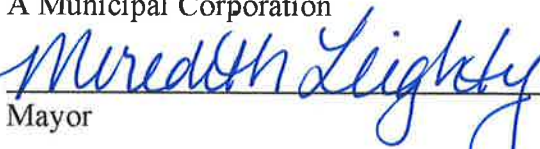

City Clerk

[SEAL]


ATTEST:


Title: Business Development Lead

CITY OF NORTHGLENN,
A Municipal Corporation

By 
Mayor

LICENSEE:


By JEFFREY POLACHET
Title: HEAD OF OPERATIONS & CONSTRUCTION