NON-EXCLUSIVE PUBLIC ROW LICENSE AGREEMENT

This Non-Exclusive Public ROW License Agreement ("**Agreement**") is by and between **The City of Council Bluffs**, a city organized and existing under the laws of the State of Iowa ("**City**"), and **Ubiquity IA, LLC**, and its direct parent, and its direct parent's subsidiaries, successors, or assigns ("**Licensee**").

RECITALS

A. City has jurisdiction over the use of the public rights-of-way in City ("**Public ROW**").

B. Licensee desires, and City desires to permit Licensee, to install, maintain, operate, and control a fiber optic infrastructure network in Public ROW (**"Network**") for the purpose of offering communications services ("**Services**"), including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) ("**Broadband Internet Services**") and Voice over Internet Protocol services, but excluding multichannel video programming services that would be subject to a video services franchise, to residents and businesses in City ("**Customers**").

C. The Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; and other similar facilities ("**Network Facilities**").

AGREEMENT

In consideration of the mutual promises made below, City and Licensee agree as follows:

1. <u>Permission to Use and Occupy</u>.

1.1. <u>Permission to Use and Occupy Public ROW</u>. City grants Licensee permission to use and occupy the Public ROW (the "**License**") for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the "**Work**"). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee's use of any City owned property, including poles and conduits, will be governed under a separate Agreement regarding that use.

1.2. <u>Subject to Federal, State and Local Law</u>. This Agreement and the License are subject to City's valid authority under federal, state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement.

1.3. <u>Subject to City's Right to Use Public ROW</u>. This Agreement and the License are subject and subordinate to City's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing public roads, sewers, curbs, gutters, streets, alleys, sidewalks, parks, recreational facilities, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.

1.4. Subject to Pre-Existing Property Interests. Municipality's grant of License is subject to all valid pre-existing easements, restrictions, conditions, covenants, publicly available third-party rights to the Public ROW, encumbrances, claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.

1.5. No Grant of Property Interest. The License does not grant or convey any property interest.

1.6. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.

2. Licensee's Obligations.

2.1. Individual Permits Required. Licensee will obtain City's approval of any and all required individual encroachment, construction, excavation, and/or other required permits before placing its Network Facilities in the Public ROW or other property of City as authorized. Licensee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by City.

2.2. Licensee's Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.

2.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing the Work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City.

2.4. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.

2.5. No Nuisance. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.

2.6. Repair. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is directly caused by Licensee's Work and no other Person is responsible for the damage (e.g., where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section 2.6 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.

2.7. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in the Public ROW and will provide them to City

upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections.

2.8. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network Facilities.

3. City's Obligations.

Notwithstanding City's obligation as outlined in Section 3. of this Agreement, Licensee's use of Public ROW or City property shall be conducted in a manner consistent with lawful and applicable public easement rights.

3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City and any affected public utility will, if possible, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities.

3.2. Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with planned use of the Public ROW or other City property for any governmental purpose as reasonably determined by the City, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, Licensee will, upon six (6) month's written notice from the City, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City may not require Licensee to relocate or remove its Network Facilities with less than sixty (60) business days' notice.

3.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with (a) Municipality's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities at Licensee's cost.

3.4. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were

located to the same or similar conditions existing prior to the Licensee's construction as well as any applicable local ordinance or state law.

4. Contractors and Subcontractors.

4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf.

4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under any applicable law.

4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A** ("**Authorized Individuals**"). City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

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5. Defense and Indemnity.

5.1. Obligations. Licensee will defend City, its officers, elected representatives, and employees, and indemnify them against any and all Third Party Damages, including but not limited to, property damage, personal injury, or death to the extent caused by the negligence or willful misconduct of Licensee or its contractors arising from this Agreement ("**Third Party Legal Proceeding**").

5.2. Exclusions. Section 5 (Defense and Indemnity) will not apply to the extent the underlying allegation (a) arises from or is related to the negligence or willful misconduct of an indemnified party or (b) is made by City's employee and covered under applicable workers' compensation laws.

5.3. Conditions. Section 5.1 (Obligations) is conditioned on the following: (a) City making its best efforts to promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegation(s) that preceded the Third Party Legal Proceeding no later than fifteen (15) days after City was served, in accordance with Iowa law, the Third Party Legal Proceeding; (b) City must reasonably cooperate in the defense at Licensee's request; and (c) City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (i) City may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring City to admit liability, pay money, or take (or refrain from taking) any action, will require City's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

6. Limitation of Liability. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

7. Performance Bond. Licensee will provide City with a performance bond in the amount of fifty thousand dollars ($50,000.00), naming Municipality as obligee and guaranteeing Licensee's

faithful performance of its obligations under this Agreement. The performance bond will remain in full force during the Term of this Agreement.

8. Insurance.

Licensee will carry and maintain:

8.1. Commercial General Liability (CGL) insurance, with policy limits not less than $2,000,000 in aggregate and $2,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names Municipality, its employees, and officers as additional insureds.

8.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be mailed directly to Municipality's insurance compliance representative prior to the commencement of any work under this Agreement.

9. Term. This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any required implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Agreement will automatically renew for successive five (5) year terms (each a "**Renewal Term**") unless a party provides at least ninety (90) days' prior written notice to the other party of its intent not to renew.

10. Termination.

10.1. Termination by City. City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that City must first provide Licensee written notice of the breach and one hundred eighty (180) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Licensee and City must mutually agree to a schedule that will establish benchmarks and an end date to allow for any cure beyond the provided one hundred eighty (180) day period. No termination under this paragraph will be effective until the relevant cure period has expired.

10.2. Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.

11. Assignment. Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

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

11.1.1. to any Affiliate (as defined below) of Licensee;

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

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

11.2. Following any assignment of this Agreement to an Affiliate, Licensee will not remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

12. Notice. All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City, to the City of Council Bluffs Public Works Director, 209 Pearl Street, Council Bluffs, IA 51503] with a copy to the City Attorney. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

13. General Provisions. This Agreement is governed by the laws of the state of Iowa. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement and the exhibits thereto sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms, including, but not limited to, amendments or modifications, must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

14. Approval. This Agreement shall not be effective until the execution of this Agreement by the City has been approved by resolution of its City Council.

15. Non-discrimination. Licensee will comply (and similarly require compliance by contractors from time to time used or hired to plan, construct or maintain Network Facilities pursuant to this Agreement) with applicable federal, state, and local laws with respect to prohibitions against discrimination on the basis of race, color sex, age, disability, political or religious opinions, affiliations or national origin.

16. **Reservation of Rights**. The parties expressly reserve any rights either of them may have under state or federal law concerning the subject matter of this Agreement and further agree that by execution and performance of this Agreement, neither party shall be deemed to have waived any such rights.

17. **Severability.** If any part of this Agreement is deemed invalid, illegal, or unenforceable, the remainder of this Agreement will remain in effect.

[*Signature page follows*]

Signed by authorized representatives of the parties on the dates written below.

Ubiquity IA, LLC

_____
(Authorized Signature)

Jamie W. Earp
(Name)

Co-CEO
(Title)

Address:
121 W. Trade St. Suite 1275
Charlotte, NC 28202

Date: _____

DATED this __- day of _____, 2022.

ATTEST: CITY OF COUNCIL BLUFFS:

_____ _____
CITY CLERK, CITY OF COUNCIL BLUFFS MAYOR OF THE CITY OF COUNCIL BLUFFS

APPROVED AS TO FORM:

_____
DEPUTY CITY ATTORNEY

EXHIBIT A
FORM OF LETTER OF AUTHORIZATION

[LICENSEE LETTERHEAD]
[Date]
Via Email ([Email Address])

City of Council Bluffs
[Addressee]
[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Non-Exclusive Public ROW License Agreement dated _____ between **the City of Iowa** and **XXXXX**, **XXXXX** hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to the City on behalf of **XXXXX**. [*If applicable:* This letter amends and supersedes the Letter of Authorization dated ____.]

[Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.]

1. Name, Title
2. Name, Title
3. Name, Title (previously authorized, authorization continues)
4. ~~Name, Title~~ (authorization withdrawn)

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

[Name]
XXXXX