

CONDUIT LICENSE AGREEMENT

This CONDUIT LICENSE AGREEMENT ("Agreement") is entered into between City of Meridian, an Idaho Municipal Corporation ("City") and Fatbeam, LLC, an Idaho Limited Liability Company ("Fatbeam"). This Agreement as of the 10th day of March, 2022 (the "Effective Date"). Each of the City and Fatbeam are individually referred herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City has a conduit system approximately 2,284 feet in length, as set forth in Exhibit A to this Agreement (the "City Route");

WHEREAS, Fatbeam has a conduit system approximately 2,777 feet in length, as also set forth in Exhibit A to this Agreement (the "Fatbeam Route") (together with the City Route, each a "Route" and collectively the "Routes");

WHEREAS, the City and Fatbeam believe that the interests of the public and the Parties will be well served by City and Fatbeam respectively licensing to the other party, the access and use of each respective Route in accordance with the terms and conditions contained herein and that the value of the exchanged fiber in City's Route is roughly equal to the value of the exchanged fiber in Fatbeam's Route.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. EXCHANGE OF CONDUIT.

1.1 As of the Effective Date of this Agreement, and subject to Section 1.2 below, Subject to the terms set forth herein: (i) City hereby irrevocably (except in the case of uncured breach of this license) licenses to Fatbeam, and Fatbeam's employees and authorized agents, to: (A) access, occupy, and right to use, the City Route, for the purposes set forth in this Agreement.; and (B) install fiber, and (ii) Fatbeam hereby irrevocably (except in the case of uncured breach of this license) licenses to the City, and City's employees and authorized agents, to: (C) access, occupy, and right to use, right to use, Fatbeam Route; and (B) install fiber. Exhibit A is attached hereto and incorporated by reference.

1.2 Prior to commencement of the respective license set forth in Section 1.1, and as a precondition to each Party's respective obligations to exchange as contemplated hereunder, each Party shall, no later than thirty (30) days from notice received from the other Party of proposed delivery of the respective Routes, perform an inspection of the Route to verify that its "as-is" condition is acceptable to the respective Party. Each Party shall review the results of the testing and provide written notice accepting (or rejecting by specifying the defect or failure in the testing which is the basis for such rejection) the other party's Route. If a Party fails to provide notification of its acceptance or rejection of the final test results with respect to the other Party's Route within thirty (30) days after the receipt of the notice of proposed delivery, the recipient Party shall be deemed to have accepted the other Party's Route. The date of such notice of acceptance (or deemed acceptance) of the Route shall be the "Acceptance Date" for the Fatbeam Conduit. In the event of any good faith rejection, the granting Party shall take such action reasonably necessary and as expeditiously as practicable to correct or cure such defect or failure and the process of testing, provide notice to the other Party and acceptance shall be repeated with respect to such rejected Route.

1.3 Subject to the provisions of this Agreement, each Party shall have responsibility for determining any network and service configurations or designs, routing configurations, rearrangement or consolidation of channels or circuits and all related function with regard to the use of that Party's Route.

2. CONSIDERATION. The Parties mutually acknowledge and agree that the mutual license and exchange of the respective Routes is fair and valuable exchange of consideration.

3. LICENSE TERM. The initial term of the license set forth in Section 1 shall commence upon the Acceptance Date, and shall continue for a period of twenty (20) years (“Initial License Term”). Upon the expiration of the Initial License Term, the term of the license shall continue for two (2) successive five (5) year periods respectively (each and collectively, the “Renewal License Term”), unless otherwise terminated by either Party upon written notice not less than ninety (90) days prior to the termination of the Initial License Term or a Renewal License Term. Both the Initial License Term and the Renewal License Term are collectively referred to herein as the “License Term.”

4. FIBER. The Parties acknowledge and agree that: (a) Each Party may elect, in its discretion, to install fiber(s) into the other party’s Route which it is licensing under this Agreement; and (b) upon the installation of fiber(s), all ownership rights shall vest in the install Party. The non-installing Party hereby assigns all right, title and interest in and to the fiber(s), that the non-installing Party may now or hereafter have in and to the fiber(s).

5. WARRANTY

5.1 With respect to the respective Routes, each Party represents and warrants to the other Party that:

- (a) the Routes have been constructed in accordance with industry standards in effect at the time of construction;
- (b) During the License Term, the conduit in the Routes, and the construction thereof, shall materially conform with the Specifications. If either Party discovers any defect in construction within twelve (12) months following the Effective Date, the other Party which licensed the defective Route shall, within fifteen (15) days of receiving written notice of such defect, correct any such defect within thirty (30) days thereafter at licensing Party's expense or provide notice of its dispute as to any defects. In the event the correcting Party is unable to correct any such defect with that thirty (30) day period, the other Party may elect to provide notice to terminate this Agreement;
- (c) it is the true and lawful owner, and it currently holds all rights, licenses, permits, authorizations, franchises, rights of way, easements and any other necessary governmental approvals;
- (d) During the License Term, each Party shall obtain and maintain in full force and effect all rights, licenses, permits, authorizations, franchises, rights-of-way, easements, leases, access rights and other rights, consents and approvals (collectively, the “Required Rights”) that are necessary in order to permit the other Party to construct, install and keep installed, replace, repair and maintain the respective Route;
- (e) No Hazardous Materials (as defined below) shall be created, stored, used, disposed of, brought to or handled at any time on or near the Routes, except Hazardous Materials contained in or used in connection with construction equipment necessary for the operation of such equipment or vehicle being used for work which is authorized this Agreement. For purposes of this Agreement, “Hazardous Materials” means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment; and
- (f) Each Party agrees to transfer and assign to the other Party any warranty it may have received from the manufacturer, or supplier, to the extent that such warranty is assignable.

5.2 EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE RESPECTIVE ROUTES, INCLUDING THE CONDUIT, HAND HOLES OR OTHER ASSOCIATED MATERIALS, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. IN ADDITION, EXCEPT AS SET FORTH IN THIS AGREEMENT, CITY MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY TYPE CONCERNING THE INTEGRITY OR PERFORMANCE OF THE MATERIALS FURNISHED BY FATBEAM.

6. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM.

7. GENERAL

7.1 Default and Termination. In the event of a default, the non-defaulting party must provide written notice of such default including reasonable detail, and an opportunity to cure the default within thirty (30) days after receipt of such notice. Notwithstanding, when a default cannot reasonably be cured within such thirty (30) day period, the time for curing such default shall be extended for a period no longer than sixty (60) days from the date of the receipt of the default notice if the Party proceeds promptly to cure the default with due diligence.

7.2 Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service) addressed as follows:

To Fatbeam as follows:

Fatbeam, LLC
2065 W. Riverstone Drive, Suite 105
Coeur d'Alene, ID 83814
Attn: Chief Operating Officer

To City as follows:

David Tiede, CIO
Meridian City Hall
33 E. Broadway Ave,
Meridian, Idaho 83642

With a Copy to Meridian City Clerk

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

7.3 Assignment. Neither party shall assign or otherwise transfer, by operation of law or otherwise, any of its rights or obligations under this Agreement without the express written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign or otherwise transfer without the express written consent of the other party in connection with: (i) any disposition of all or substantially all of the assets of either party; (ii) any merger, consolidation or reorganization of either party; (iii) any assignment, in whole or in part, to any subsidiary, parent company or other affiliate of either party; (iv) any collateral assignment, security interest or pledge of this Agreement to a lender; or (v) any lease, sublease, sub easement, sublicense, indefeasible right of use, or sale or transfer of, conduit, fiber or similar facilities by either party within its telecommunications system to any third-party users of such facilities.

7.4 Costs. Each party shall bear all of its own attorney's fees and other expenses related to this Agreement.

7.5 Governing Law. This Agreement shall be governed by and construed solely in accordance with the laws of the State of Idaho with jurisdiction in the Fourth Judicial District, Ada County Court.

7.6 Force Majeure. Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control, including, but not limited to: acts of God, fire, flood or other catastrophes, adverse weather conditions, material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefore, lack of transportation, the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions, national emergencies, insurrections, terrorism, riots, wars, or strikes, lockouts, work stoppages or other labor difficulties.

7.7 Complete Agreement. This Agreement and any other written agreement expressly referenced herein represent the entire understanding between Fatbeam and City with respect to the installation and sale of the Fatbeam Conduit and Ancillary Facilities covered hereunder and incorporate all prior and contemporaneous understandings, whether written or oral, between the parties. This Agreement supersedes all other prior oral or written agreements concerning the installation and sale of the Fatbeam Conduit and Ancillary Facilities covered hereunder. This Agreement may not be rescinded, amended, or otherwise modified except by a writing executed by the authorized representatives of both parties.

7.8 No Personal Liability. Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer, director or agent of the other party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section and shall be entitled to enforce the obligations or provisions of this Section.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

Fatbeam, LLC

City of Meridian

By  _____
1453816E39B84B5...

By: _____

Printed Name: Jason Koenders

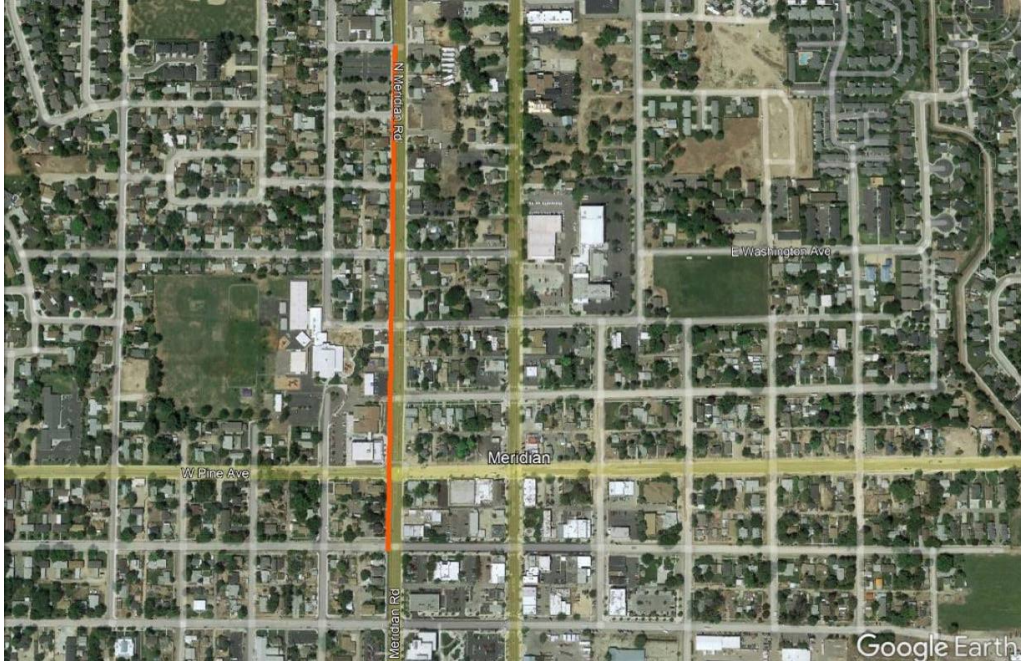
Printed Name: Robert E. Simison

Title: COO & CTO

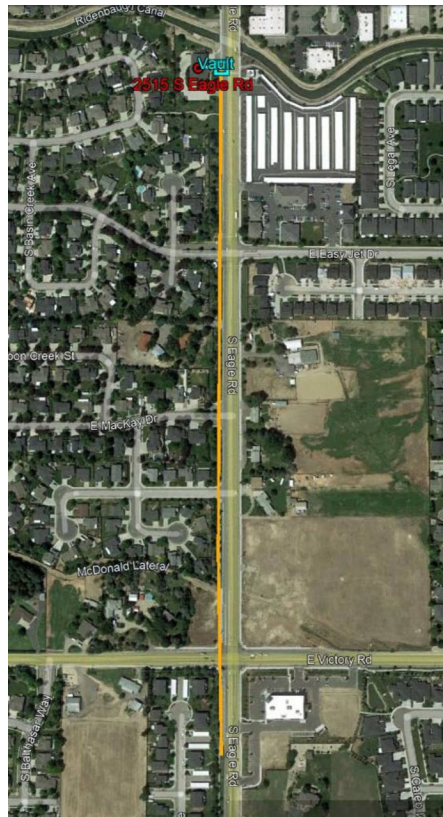
Title: Mayor

EXHIBIT A

Routes



City Route – conduit and junction boxes City owns in the subsurface of Meridian Road between Elm Avenue to Idaho Avenue



Fatbeam Route – conduit Fatbeam owns in the subsurface of Eagle Road from Fire Station 4 at 3545 N. Locust Grove Rd, Meridian, Idaho 83642 to roughly 325 feet south of the South Eagle Road/ East Victory Road intersection

Certificate Of Completion

Envelope Id: 3391E35929EC4171AD2A512D6F4F7C26	Status: Completed
Subject: Please DocuSign: CITY OF MERIDIAN_CONDUIT LICENSE AGREEMENT_FINAL 04042022.pdf	
Source Envelope:	
Document Pages: 6	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Chariti Zlateff
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	2065 W. Riverstone
	Ste. 105
	Coeur d'Alene, ID 83814
	chariti.zlateff@fatbeam.com
	IP Address: 148.59.195.106

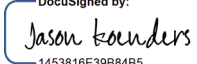
Record Tracking

Status: Original	Holder: Chariti Zlateff	Location: DocuSign
4/4/2022 5:04:28 PM	chariti.zlateff@fatbeam.com	

Signer Events

Jason Koenders
 jason.koenders@fatbeam.com
 COO/CTO
 Fatbeam, LLC
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

 1453816E39B84B5...
 Signature Adoption: Pre-selected Style
 Signed by link sent to jason.koenders@fatbeam.com
 Using IP Address: 148.59.195.106

Timestamp

Sent: 4/4/2022 5:05:44 PM
 Viewed: 4/4/2022 5:06:05 PM
 Signed: 4/4/2022 5:06:10 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/4/2022 5:05:44 PM
Certified Delivered	Security Checked	4/4/2022 5:06:05 PM
Signing Complete	Security Checked	4/4/2022 5:06:10 PM
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Payment Events	Status	Timestamps