

CITY COUNCIL REPORT



Meeting Date: October 20, 2026
General Plan Element: *Public Services and Facilities*
General Plan Goal: *Provide and maintain utility and infrastructure systems*

ACTION

Wired Telecommunications License Agreement for Teleport Communications America, LLC

1. Adopt Resolution 13777 approving Contract No. 2026-149-COS, a Wired Telecommunications Right-of-Way License Agreement that will allow Teleport Communications America, LLC to continue to construct, operate, maintain and repair a wired telecommunications network within the City's rights-of-ways.

PURPOSE

Teleport Communications America, LLC has applied to the City for a new wired telecommunications right-of-way license to continue installing and maintaining underground conduit and fiber-optic cable networks within the city to provide telecommunications services. Telecommunications licenses are permitted under Chapter 47 of the Scottsdale Revised Code with City Council approval. Teleport Communications America, LLC provides telecommunications networks, including fiber-optic connectivity, high-speed data transport, and related network facilities and services used to support the communications infrastructure, and currently has over 60 miles of network within the City of Scottsdale.

Key Items for Consideration

- Agreement conforms with Chapter 47 of the Scottsdale Revised Code.
- Teleport Communications America, LLC currently operates over 60 miles of network infrastructure within the City.
- This License Agreement requires the applicant to pay the applicable annual linear foot fee provided in the Chapter 47-166.(2) of the Scottsdale Revised Code.

BACKGROUND

On February 8, 1996, the Federal Telecommunication Act of 1996 became law, which changed the rules for competition and regulation in the communication industry to encourage marketplace competition. This set the stage for the construction of high capacity, high speed fiber optic

infrastructure networks enabling for the two-way communication and sharing of voice, text, data, pictures, and video

On July 2, 2001, the Scottsdale City Council adopted Ordinance 3368, which added Article VII to Chapter 47 of the City Revised Code. The purpose of the ordinance was to create a process and requirements for telecommunications corporations who wish to construct, operate, and maintain telecommunications facilities within the City's public rights-of-ways.

On February 19, 2002, the City Council adopted Resolution 6015 approving contract 2002-018-COS, a wired telecommunications license with Teleport Communication Group (TCG Phoenix). The term of the license was 5 years and it expired.

On July 6, 2010, the City Council adopted Resolution 8329 approving contract 2010-088-COS, a wired telecommunications license with TCG Phoenix. The initial term of the contract was 5 years, with up to three 5-year extensions, if agreed upon by both parties.

In 2013, TCG Phoenix became Teleport Communications America, LLC.

On June 11, 2019, the Scottsdale City Council approved an amendment to Chapter 47 of the Scottsdale Revised Code. With certain exemptions allowed by state statutes, the code update established an annual linear foot fee structure for conduit installed within the public rights-of-ways (and public utility easements), regardless of the status of the telecommunications provider. This fee structure allows the City to better manage the rights-of-way through fair, non-discriminatory treatment of telecommunications providers and fair compensation for use of the City's rights-of-ways.

Although the current contract can run up until July 2030 (with the extensions), staff recommends that a new license be executed to reflect the updated telecommunications provisions of Chapter 47 of the Scottsdale Revised Code.

PROPOSAL

Teleport Communications America, LLC has applied for a new wired telecommunications Right-of-Way license to continue installing and maintaining underground conduit and fiber optic cable networks within the City. The new agreement contains similar terms to other existing agreements the City has with other providers. The initial term of this agreement is 10 years, with the option to extend for 3 additional 5-year periods with the consent of both the City and the applicants. The applicant currently operates over 60 miles of network infrastructure in the City. This contract will allow for network expansion with administrative approval from the City's Telecom Policy Coordinator.

Under this contract, the applicant will be responsible for paying all applicable fees under the City Code, including the annual linear foot fee. Alternatively, the applicant and the City may agree to an in-kind exchange, subject to approval by the City Manager or designee, where a credit is provided against the annual linear foot fee if the telecommunications provider agrees to provide facilities or

services for the City. Such an agreement would be based on a City staff evaluation that the applicants can provide in-kind facilities or services beneficial to the City.

ANALYSIS & ASSESSMENT

This agreement will allow Teleport Communications America, LLC to continue maintaining their network, installing conduit, manholes, splicing vaults and fiber optic cables in the City rights-of-ways.

Future network expansion is permitted under this contract with approval from the City's Telecom Policy Coordinator. All engineering and design of the network will require plan approvals and permits from the City prior to construction. The provider is required to pay all applicable plan review and permit fees, including street cut surcharges.

Teleport Communications America, LLC will need to submit an updated Letter of Credit to the City in the amount of \$100,000.00 and provide proof of insurance and indemnification during the entire term of this agreement in the amounts specified in Article XI of the agreement.

The agreement has an initial term of ten (10) years with up to three (3) additional five (5) year extensions. Letters of credit and certificates of insurance are on file with the City.

RESOURCE IMPACTS

Staffing, Workload Impacts

This contract will be managed by the City's Telecom Policy Coordinator. As the applicant's infrastructure has already been built, there should be minimal impact on staffing and workload.

Maintenance Requirements

All maintenance, repair, and relocation of the fiber optic cables and supporting infrastructure will be the responsibility of the applicant. Before performing any maintenance, repair or relocation work in the rights-of-ways, the applicant must comply with the City's requirements of plan review, permits and traffic control. The applicant has an existing \$10,000.00 letter of credit on file with the City that will need to be increased to \$100,000.00 with this agreement.

Cost Recovery

As part of the telecommunications license application process, the applicant submitted a license application fee of \$2,000.00, as required in Section 47-164 of the Scottsdale Revised Code. The applicant will pay the City all applicable plan review and permits fees, inspection fees, street surcharge fees, and any other fees that may be necessary for the installation, operation, maintenance and repair of the network. Additionally, the applicant will be responsible for paying all applicable fees under the City Code, including the annual linear foot fee for conduit installed within the rights-of-ways or public utility easements, or providing the city in-kind facilities as required per Section 47-166 of the Scottsdale Revised Code.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

1. Adopt Resolution 13777 approving Contract No. 2026-149-COS, a Wired Telecommunications Right-of-Way License Agreement that will allow Teleport Communications America, LLC to continue to construct, operate, maintain and repair a wired telecommunications network within the City's rights-of-ways.

RESPONSIBLE DEPARTMENT

Planning and Development Services

STAFF CONTACT

Keith Niederer
Telecom Policy Coordinator
480-312-2953
kniederer@scottsdaleaz.gov

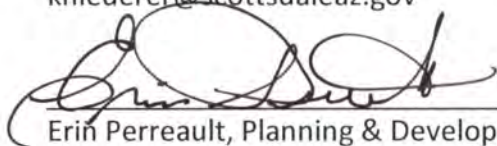
APPROVED BY



10/1/2026

Keith Niederer, Telecom Policy Coordinator
480-312-2953
kniederer@scottsdaleaz.gov

Date



Erin Perreault, Planning & Development Director
480-312-2664
eperreault@scottsdaleaz.gov

10/01/2026

Date

ATTACHMENTS

- 1: Resolution No. 13777
- 2: Contract 2026-149-COS

RESOLUTION NO. 13777

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING WIRED TELECOMMUNICATIONS RIGHT-OF-WAY LICENSE AGREEMENT NO. 2026-149-COS WITH TELEPORT COMMUNICATIONS AMERICA, LLC TO CONSTRUCT AND OPERATE A TELECOMMUNICATIONS NETWORK IN THE CITY'S RIGHTS-OF-WAY.

WHEREAS, Teleport Communications America, LLC ("Licensee") desires to install and operate a telecommunications network within the public rights-of-way; and

WHEREAS, the City of Scottsdale desires to grant to Licensee a license for the installation and operation of Licensee's telecommunications network;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The City Council hereby authorizes, approves, and directs the Mayor to execute, on behalf of the City, Wired Telecommunications Right-of-Way License Agreement No. 2026-149-COS with Teleport Communications America, LLC, to construct and operate a telecommunications network in the City's rights-of-way.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 2026.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

Lisa Borowsky, Mayor

ATTEST:

By: _____
Ben Lane, City Clerk

APPROVED AS TO FORM:



Luis E. Santaella, City Attorney
By: Jennifer Fernandez, Assistant City Attorney

ATTACHMENT 1

Teleport Communications America, LLC

Contract No. 2026-149-COS

Resolution No. 13777

WIRED TELECOMMUNICATIONS RIGHT-OF-WAY LICENSE AGREEMENT

THIS WIRED TELECOMMUNICATIONS RIGHT-OF-WAY LICENSE AGREEMENT ("Agreement") is made this ____ day of _____, 2026, ("Effective Date") by and between the City of Scottsdale, an Arizona municipal corporation ("Licensor" or "City"), and TELEPORT COMMUNICATIONS AMERICA, LLC, a Delaware limited liability company ("Licensee").

RECITALS

A. Licensor owns public street and alley rights-of-way and public utility easements within the boundaries of the City of Scottsdale (the "Boundaries") that are designated for use by public utility companies for installation, operation and repair of water, electrical and other public utilities pursuant to franchises, licenses or other agreements between utility companies and Licensor (collectively, the "Right-of-Way").

B. Lessee desires to install and operate telecommunications lines and related equipment (the "Private Plant") on a portion of the Right-of-Way (the "Use Areas"), subject to the requirements of this Agreement. The boundaries of the Use Areas are depicted on Exhibit "A" attached hereto (the "Use Areas Map").

C. Licensor desires to grant to Lessee a license to install, maintain, operate, and repair the Private Plant (the "Permitted Uses") subject to the requirements of this Agreement.

D. Licensor and Licensee desire to provide a method whereby additional portions of the Right-of-Way (the "New Use Areas") can be added to this Agreement.

E. Licensor desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Areas.

F. Various laws (the "Telecommunications Laws") authorize Licensor to regulate its streets, alleys and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of telecommunications systems. The Telecommunications Laws include, without limitation, the following:

- 1) Chapter 47 of the Scottsdale Revised Code entitled "Streets, Sidewalks and Public Works Generally" (the "Street Code").
- 2) The Scottsdale City Charter.
- 3) A.R.S. §§ 9-581 through 9-583 and other state and federal statutes.
- 4) The Constitution of the State of Arizona.
- 5) Other applicable federal, state and local laws, codes, rules and regulations.

6) Licensor's police powers, its authority over public rights-of-way, and its other governmental powers and authority.

G. There may be portions of the Right-of-Way (the "Third-Party Areas") upon which the Private Plant may not be built without permission (the "Third Party Permission") from one or more third parties (the "Third Parties"). The Third-Party Areas are areas such as canal crossings or other areas that for any reason have limited Right-of-Way dedications or that have regulatory use restrictions imposed by a Third Party.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and other good and valuable consideration, Licensor and Licensee agree as follows:

I. USE AREAS

1. **Use Areas.** Licensor hereby grants to Licensee a license to use the Use Areas as follows:

1.1 **Use Areas Defined.** The Use Areas are the portion of the Right-of-Way shown on the Use Areas Map. The Right-of-Way is limited to the public street and alley rights-of-way and public utility easements that are owned by Licensor from time to time comprising Licensor's public utility easement network. The land comprising the Right-of-Way will decrease, increase, and otherwise change over time due to abandonments, dedications, annexations, de-annexations, and other events that affect the amount of land included in Licensor's public utility right-of-way network inventory. This Agreement shall not allow Licensee to use Right-of-Way that is abandoned, condemned, removed from the Boundaries, or is otherwise no longer part of Licensor's public utility easement network.

1.2 **Non-Use Areas.** Licensee shall not use or occupy any portion of the Use Areas other than as necessary to perform its obligations under this Agreement. The Private Plant shall be confined to the Use Areas.

1.3 **New Use Areas.** Licensor and Licensee may elect to add New Use Areas to this Agreement subject to the following:

1.3.1 When Licensee desires to add New Use Areas to the Use Areas, Licensee shall give notice to Licensor containing the following:

1.3.1.1 A map showing the area proposed to be added to the Use Areas.

1.3.1.2 A map showing the total Use Areas, including the proposed New Use Areas.

1.3.2 Within thirty (30) days after receiving such a notice, Licensor shall inform Licensee whether Licensor approves the proposed New Use Areas.

1.3.3 Upon addition of New Use Areas, the New Use Areas shall be part of the Use Areas for all purposes under this Agreement. All New Use Areas shall be subject to all Provisions of this Agreement.

1.3.4 Licensors City Manager or designee shall have authority without further act by Licensors City Council to consent for Licensors to the addition of New Use Areas and otherwise act for Licensors under this paragraph.

1.4 Condition of Title. Licensee's rights hereunder are subject to all recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Use Areas (the "Site Documents"). Licensee's rights to use the Use Areas under this Agreement are limited to a subset of the interests held by Licensors from time to time. Licensee shall not violate the Site Documents.

1.5 Condition of Use Areas. The Use Areas are being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.

1.6 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights herein are limited to use and occupation of the Use Areas for the Permitted Uses. Licensee's rights in the Use Areas are limited to the specific limited license rights created by this Agreement.

1.7 Limited Rights in Use Areas. This Agreement grants Licensee no rights to or use of the Use Areas other than those expressly granted herein.

1.8 Reserved Right and Competing Users and Activities. Notwithstanding anything in this Agreement to the contrary, Licensors specifically reserves to itself and excludes from this Agreement a non-exclusive delegable right (the "Reserved Right") over the entire Use Areas for all manner of real and personal improvements and for streets, sidewalks, trails, landscaping, utilities and every other land use of every description. Without limitation:

1.8.1 Competing Users. Water pipes, pavement, and other facilities may all be located within the same Segment of Right-of-Way with portions of the Private Plant. Licensee accepts the risk that Licensors and others (the "Competing Users") may now or in the future install their facilities in the Use Areas in locations that make parts of the Right-of-Way unavailable for Licensee's use. The Competing Users include without limitation Licensors, the State of Arizona and its political subdivisions, the public, and all manner of utility companies and other existing or future users of the Use Areas.

1.8.2 Competing Activities. Licensee accepts the risk that there may now or in the future exist upon the Use Areas all manner of work and improvements upon the Use Areas (the "Competing Activities"). The Competing Activities include without limitation any and all laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning or other dealing with any or all of the following, whether above, upon or below the surface of the Use Areas and whether occasioned by existing or proposed uses of the Right-of-Way or existing or proposed uses of adjoining or nearby land:

1.8.1.1 All manner of streets, alleys, sidewalks, trails, ways, traffic control devices, subways, tunnels, trains and gates of every description, and all manner of other transportation facilities and their appurtenances.

1.8.1.2 All manner of pipes, wires, cables, conduits, sewers, pumps, valves, switches, conductors, connectors, poles, supports, access points and guys of every description, and all manner of other utility facilities and their appurtenances.

1.8.1.3 All manner of canals, drains, bridges, viaducts, overpasses, underpasses, culverts, markings, balconies, porches, overhangs and other encroachments of every description and all manner of other facilities and their appurtenances.

1.8.1.4 All other uses of the Right-of-Way that Licenser may permit from time to time.

1.8.3 Reserved Right. The Reserved Right includes the right to use and allow other Competing Users to conduct Competing Activities at any location upon the Use Areas.

1.8.4 Licenser's Rights Cumulative. All of Licenser's Reserved Rights under various provisions of this Agreement shall be cumulative to each other.

1.8.5 Use Priorities. This Agreement does not grant to Licensee or establish for Licensee any exclusive rights or priority in favor of Licensee to use the Use Areas. Licensee's use of the Use Areas shall be subordinate to all Competing Activities in accordance with applicable law. Licensee shall not obstruct or interfere with or prevent any Competing User from using the Use Areas, provided that if the Competing User is not a governmental entity (a private entity) and said Competing User seeks to place or modify facilities in a Use Area where Licensee has lawfully placed and maintains Licensee facilities, nothing in this Agreement shall be construed to affect any right Licensee may have to be reimbursed by said Competing User for any modification, removal, or relocation of Licensee's previously-existing facilities undertaken to accommodate said Competing User's desired use.

1.8.6 Regulation. Licenser shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, Licenser may take any or all of the following into account in regulating use of the Use Areas:

1.8.6.1 All timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for Competing Activities.

1.8.6.2 All other factors Licenser may consider relevant, whether or not mentioned in this Agreement.

1.8.6.3 Differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to Competing Users and Competing Activities.

1.8.7 Private Plant Relocation. Upon Licenser's request, Licensee shall temporarily or permanently relocate or otherwise modify the Private Plant (the "Relocation Work") as follows:

1.8.7.1 Licensee shall perform the Relocation Work at its own expense when required by Licenser's City Manager or designee for any public purpose as determined by the City.

1.8.7.2 The Relocation Work includes all work determined by Licensor to be necessary to accommodate Competing Activities, including without limitation temporarily or permanently removing, protecting, supporting, disconnecting or relocating any portion of the Private Plant.

1.8.7.3 Within ninety (90) days after service of notice by Licensor, Licensee shall remove the designated portions of the Private Plant, or in the event that, by the nature of the removal, such removal cannot reasonably be performed within the ninety-day period, Licensee shall take reasonable steps to timely commence removal of the Facilities and diligently prosecute the removal to completion. Licensor may perform any part of the Relocation Work that has not been performed within ninety (90) days or is not being diligently prosecuted after ninety (90) days after notice from Licensor. Licensee shall reimburse Licensor for its actual costs in performing any Relocation Work.

1.8.7.4 City has no obligation to move Licensee's, City's or others' facilities.

1.8.7.5 Licensor and not Licensee shall be entitled to use any of Licensee's facilities that are abandoned in place or that are not timely relocated.

1.8.7.6 All Relocation Work shall be subject to and comply with all other provisions of this Agreement.

1.8.7.7 Licensee's relocation obligations hereunder are not intended to create any legal rights in any third party. Without limitation, no third party shall be a third party beneficiary of such obligations, and, therefore, any and all obligations third parties may have to bear the cost of relocating Licensee's facilities in connection with Competing Activities shall not be diminished by Licensee's relocation obligations hereunder.

1.8.8 Disruption by Competing Users. Neither the Licensor nor any governmental Competing User, nor their respective agents, contractors, or employees, shall be liable to Licensee, its customers, or third parties for any service disruption or other harm caused to them or the Private Plant due to Competing Users or Competing Activities.

1.8.9 Emergency Disruption by Licensor. Licensor may remove, alter, tear out, relocate or damage portions of the Private Plant in the case of fire, disaster, or other emergencies if Licensor's City Manager or designee deems such action to be reasonably necessary under the circumstances. In such event, neither Licensor nor any agent, contractor nor employee of Licensor shall be liable to Licensee or its customers or third parties for any harm so caused to them or the Private Plant. When practical, Licensor shall consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Private Plant. In any event, Licensor shall inform Licensee after such actions. Licensee's work to repair or restore the Private Plant shall be Relocation Work.

1.8.10 Public Safety. If the Private Plant or any other Licensee equipment, improvements or activities within the Use Areas present any immediate hazard or impediment to the public, to Licensor, to other improvements or activities within or without the Use Areas, or to Licensor's ability to safely and conveniently operate the Right-of-Way or perform Licensor's utility, public safety and other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with Licensor's requests to secure the Use Areas, and otherwise cooperate with Licensor at no expense to Licensor to remove any such hazard or impediment.

Licensee's work crews shall report the Use Areas within two (2) hours of any request by Licensor under this paragraph.

II. TERM OF AGREEMENT

2. **Term of Agreement.** The term of this Agreement is as follows:

2.1 **Original Term Expiration.** The original term of this Agreement shall terminate 11:59 p.m. on the date that is the tenth (10th) annual anniversary of the Effective Date, unless sooner terminated as set forth in this Agreement.

2.2 **Extensions.** The term of this Agreement may be extended for three (3) additional five (5) year periods subject to the following:

2.2.1 No extension shall be effective without the consent of both Licensor and Licensee.

2.2.2 Both Licensor and Licensee may withhold their consent to an extension in their sole and absolute discretion.

2.2.3 Both Licensor and Licensee shall indicate whether or not they consent to an extension by giving notice of consent to the other not more than one hundred eighty (180) days prior to the end of the initial term (or, in the case of the second or subsequent extension, the prior extension).

2.3 **Holding Over.** In any circumstance whereby Licensee would remain in possession or occupancy of the Use Areas after the expiration of this Agreement, such holding over shall operate as a limited renewal or extension of this Agreement from month to month that may be terminated at any time by Licensor upon sixty (60) days' notice to Licensee, or by Licensee upon sixty (60) days' notice to Licensor.

2.4 **Agreement Accepted.** By accepting this Agreement, Licensee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Street Code, the Telecommunications Laws, and this Agreement.

III. LICENSEE'S PAYMENTS

3. **Licensee's Payments.** Licensee shall make payments to Licensor as follows:

3.1 **Fee Payment Items.** Licensee shall pay to City each of the following separate and cumulative amounts (collectively the "Fee Payment"):

3.1.1 An amount (the "Annual Fee Payment") based on Licensee's use of the Private Plant.

3.1.2 An amount (the "Permit Fee Payment") based on Licensee's permit review and other costs as set out below.

3.1.3 An amount (the "Violation Fee Payment") based on certain breaches by Licensee of this Agreement as set out below.

3.1.4 All other amounts required by this Agreement.

3.2 Annual Fee Payment Amount. The amount of the Annual Fee Payment shall be as is set forth in Chapter 47 of the Scottsdale City Code, specifically S.R.C. § 47-166 (as may be amended from time to time).

3.3 In-Kind Facilities In-Lieu of Annual Fee Payment. In accordance with S.R.C. § 47-166a, Licensee and Licensor, through its City Manager or designee, may agree, at any time, to Licensee's provision of in-kind facilities in-lieu of all or any portion of the Annual Fee Payment that would otherwise be lawfully due and payable under the Scottsdale City Code.

3.4 Permit Fee Payment Amount. The amount of the Permit Fee Payment shall be the total amount of all applicable ordinary fees (the "Ordinary Permit Charges") payable to Licensor for Licensor's review of plans, issuance of permits, and inspection of Licensee's work upon the Use Areas.

3.5 Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.

3.6 Fee Payment Schedule. Except as specifically provided elsewhere for Violation Fee Payment, Licensee shall pay all Fee Payment on the following schedule:

3.6.1 Licensee shall pay Permit Fee Payment at the times and in the amounts specified by Licensor's normal processes for Ordinary Permit Charges.

3.6.2 All other Fee Payment shall be payable quarterly in arrears on the last day of the first month of the next calendar quarter. For example, the Violation Fee Payment for the first calendar quarter of a year shall be payable on or before April 30.

3.7 Fee Payment Amount Report. Each installment of Fee Payment other than Permit Fee Payment shall include a report showing the manner in which each component of the Fee Payment was calculated. The report shall summarize the transactions giving rise to the License Fee Payment.

3.8 Assurances.

3.8.1 Letter of Credit. Prior to receiving any permit to perform any work in connection with this Agreement, and in no event later than ten (10) days following the Effective Date, Licensee shall at its own expense obtain and provide to the City a letter of credit as follows:

3.8.1.1 The amount of the letter of credit shall be One Hundred Thousand Dollars (\$100,000).

3.8.1.2 The letter of credit is an additional security deposit for Licensee's performance of all its duties and obligations under this Agreement.

3.8.1.3 The letter of credit shall meet the requirements listed on Exhibit "B" attached hereto.

3.8.1.4 Licensee shall provide and maintain the letter of credit during the entire term of this Agreement as follows:

- 3.8.1.4.1 No later than thirty (30) days before a letter of credit is required, Licensee shall give Licensor notice containing a copy of the proposed form of letter of credit, along with a copy to Licensor's financial services general manager.
 - 3.8.1.4.2 Licensee shall cause the original letter of credit to be delivered to Licensor's financial services general manager.
 - 3.8.1.4.3 Licensee shall pay all costs associated with the letter of credit, regardless of the reason or manner such fees are required.
 - 3.8.1.4.4 Within fourteen (14) days after Licensor gives Licensee notice that Licensor has drawn on the letter of credit, Licensee shall cause the letter of credit to be replenished to its prior amount.
- 3.8.1.5 Licensor may draw on the letter of credit upon any Event of Default, and in the following circumstances whether or not they are an Event of Default:
- 3.8.1.5.1 Licensee fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this agreement.
 - 3.8.1.5.2 Licensee fails to make monetary payments required under this Agreement.
 - 3.8.1.5.3 The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.
- 3.8.1.6 Licensor shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

3.9 Late Fees. Fee Payment is deemed paid only when Licensor actually receives good cash payment. Should any Fee Payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount One Hundred Dollars (\$100). Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1½ %) per month from the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent fair and reasonable estimates by Licensor and Licensee of Licensor's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of Fee Payment. Licensor shall have the right to allocate payments received from Licensee among Licensee's obligations.

3.10 Fee Payment Amounts Cumulative. All amounts payable by Licensee hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the City of Scottsdale or the State of Arizona shall be cumulative and payable in

addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

IV. USE RESTRICTIONS

4. **Use Restrictions.** Licensee's use and occupation of the Use Areas shall in all respects conform to all and each of the following cumulative provisions (collectively the "Restrictions"):

4.1 **Permitted Uses.** Licensee shall use the Use Areas solely for the Permitted Uses and shall conduct no other activity at or from the Use Areas. The Permitted Uses are limited to the following:

4.1.1 Constructing, maintaining, repairing and operating the Private Plant as described in this Agreement.

4.1.2 Such additional related uses for which Licensor may give or retract consent from time to time. Such additional uses may only be conducted following Licensor's giving to Licensee notice of such consent. Licensor may terminate or impose lawful conditions and limitations on such consent from time-to-time in Licensor's sole and absolute discretion.

4.2 **Prohibited Uses.** All other uses of the Use Areas are prohibited.

4.3 **Equipment Allowed.** The Private Plant is limited to the equipment listed on the list attached hereto as Exhibit "C" (the "Equipment List").

4.4 **User Contracts.** Licensee may enter into contracts between Licensee and third parties or Affiliates in the ordinary course of Licensee's business for use of portions of the Private Plant (the "User Contracts"). As used in this Agreement, "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common ownership or control with Licensee, where "control" means the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise. User Contracts shall be subject to all requirements and provisions of this Agreement and the following:

4.4.1 No person shall transmit data over the Private Plant or otherwise use the Private Plant except under a User Contract with Licensee.

4.4.2 No third parties or Affiliates are authorized to perform any construction maintenance, repair or other work of any description in the Use Areas related to the Private Plant. All User Contracts shall prohibit all third parties and Affiliates from performing any construction, maintenance, repair or other work of any description in the Use Areas related to the Private Plant.

4.4.3 Licensee may use a User Contract to either "sell" or "lease" fibers or conduit in the Private Plant or otherwise grant permission to a third party or Affiliate to use fibers or conduit in the Private Plant. But all User Contracts and all rights and interests created or affected in any way thereby, however denominated, shall be subject to and limited by all provisions of this Agreement. In no event shall Licensor be bound in any way by any provision of any User Contract. Licensee shall not represent to any User Contract party that Licensor bears any obligation or liability to that party, and all User Contracts shall include a provision stating that Licensor is not a party to the User Contract and assumes no obligation or liability thereunder.

4.4.4 Within thirty (30) days after a notice of request by Licensor, such notice to be given not more often than once in any twelve (12) month period, Licensee shall deliver to Licensor a notice describing the User Contracts. The notice shall state the following:

4.4.4.1 The name of the third party or Affiliate.

4.4.4.2 The name, title, address, telephone number, and email address of a person with authority to speak for the third party or Affiliate.

4.4.4.3 The route of the proposed service.

4.4.4.4 The street address within the City of Scottsdale, if any, where data under the User Contract will be introduced to or received from the Private Plant.

4.4.4.5 The duration of the User Contract and any extension rights.

4.4.4.6 Affiliate User Contract Notice. Licensee shall give Licensor written notice within thirty (30) days of executing any User Contract with an Affiliate. Such notice shall include all information specified in Section 4.4.4.

4.4.5 Affiliate Regulated Activities. Licensee shall ensure that no Affiliate uses the Private Plant for Regulated Activities. Any such use without Licensor's prior written consent and without the Affiliate separately obtaining all required approvals shall constitute an Event of Default.

4.4.6 Contractors. Licensee may use contractors and subcontractors to perform physical work in the Right-of-Way, provided that:

(a) Licensee remains fully responsible for all acts, omissions, and obligations of such contractors and subcontractors;

(b) no contractor or subcontractor shall have any rights under this Agreement or any right to use the Right-of-Way except through Licensee; and

(c) no contractor or subcontractor shall be deemed a Licensee, assignee, operator, or holder of any interest in the Private Plant or this Agreement.

(d) contractors shall comply with all applicable provisions of the Agreement.

4.5 Regulated Activities. The following additional requirements apply to certain uses (the "Regulated Activities") of the Private Plant:

4.5.1. The following are Regulated Activities:

4.5.1.1 Use of the Private Plant for cable television or video services as defined by applicable Federal, state or local law or regulation.

4.5.1.2 Use of the Private Plant for open video service as defined by applicable Federal, state or local law or regulation.

4.5.2. Licensee shall not use the Private Plant for Regulated Activities without proper formal authorization from Licensor, separate from this Agreement.

4.5.3. Licensee may enter into User Contracts that allow third parties or Affiliates to use the Private Plant for the Regulated Activities only if such third party or Affiliate has already entered into an agreement with Licensor that allows the third party or Affiliate to conduct the Regulated Activity in the Use Areas.

4.5.4. If Licensee ever obtains or seeks federal, state or local approval to provide Regulated Activities over the Private Plant, this Agreement shall remain in effect according to its terms and Licensee shall continue to pay the Use Fees required by this Agreement, regardless of

any legal or regulatory provisions, permits or other processes or rules that might now or hereafter provide otherwise.

4.5.5. Without limiting the other amendment or waiver provisions of this Agreement, no change to or waiver of this Agreement's provisions regarding Regulated Activities is effective without a formal amendment to this Agreement executed by Licensor after approval by Licensor's City Council. Licensor has not promised any such amendment or waiver. This Agreement does not prohibit the parties from entering into other agreements regarding the Private Plant, should both parties desire to do so in their sole and absolute discretion.

4.5.6. Affiliate Regulated Activities. Affiliates of Licensee are subject to all requirements of Section 4.5. Any Affiliate use of the Private Plant for Regulated Activities shall also be governed by Section 4.4.5.

4.6 Signs. All signage is prohibited except in compliance with the following requirements:

4.6.1 Signs Required. Licensee shall install and thereafter maintain all signs and markings that the Private Plant and Licensee's activities may make necessary for safe use of the Use Areas by the public, Licensor, Licensee and other persons who may be at the Use Areas at any time for any reason.

4.6.2 Signs Covered. This paragraph shall apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.

4.7 Lighting. Lighting is prohibited except as this Agreement may specifically allow for construction activities.

4.8 Noise. Except during approved construction, noise at the Use Areas is subject to the following limitations:

4.8.1 Except for vehicle backup alarms and other safety devices, outdoor loudspeakers, sirens or other devices for making noise are prohibited.

4.8.2 All equipment must be equipped with appropriate mufflers and other sound control devices.

4.9 Governmental and Neighborhood Relations. Licensee shall conduct its activities in coordination with Licensor as necessary to maintain good relations with all Third Parties governmental and other entities having jurisdiction over the Use Areas, all other occupants of the Use Areas, and the occupants of surrounding real property. Licensee shall immediately give to Licensor notice of any actual or threatened dispute, violation or other disagreement relating to the Use Areas. Licensee is not an agent for Licensor. Without limitation, such entities (who are not third-party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Use Areas):

4.9.1 State of Arizona

4.9.2 Maricopa County

4.9.3 Bureau of Reclamation

4.9.4 Central Arizona Water Conservation District

4.9.5 Salt River Project

4.10 Licensee's Agent. Licensee shall at all times retain on call available to Licensor by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Private Plant and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and the day-to-day operation of the Right-of-Way and all other matters affecting this Agreement. Licensee shall also provide notice to Licensor of the name, street address, electronic mail address, and regular and after-hours telephone and electronic mail address of a person to handle Licensee's affairs and emergencies at the Right-of-Way. Unless and until Licensee gives notice to Licensor of a new representative, Licensee's representative shall be the staff of Licensee's network operations center. The current telephone number of the network operations center is 480-445-9151. Any change shall be given in writing hand-delivered to Licensor's contract administrator for this Agreement as well as in the manner stated for notices under this Agreement.

4.11 Coordination Meetings. Licensee shall meet with Licensor and other Right-of-Way users from time to time as requested by Licensor to coordinate and plan construction on the Right-of-Way and all matters affected by this Agreement.

4.12 Hazardous Substances. Licensee's activities upon or about the Right-of-Way shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

4.12.1 Licensee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Right-of-Way. The prohibitions of the preceding sentence only shall not apply to:

4.12.1.1 Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the Right-of-Way. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery ("Minimal Fueling").

4.12.1.2 Electric backup batteries.

4.12.2 Licensee shall dispose of any Toxic Substances away from the Right-of-Way as required by law and as reasonably required by Licensor.

4.12.3 Licensee shall not use the Right-of-Way in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environmental Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this Agreement.

4.12.4 In addition to and without limitation of any other indemnities or obligations, Licensee shall pay, indemnify, defend and hold Licensor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Right-of-Way Use Areas attributable to or caused by Licensee or anyone using the Right-of-Way under this Agreement.

4.12.5 Licensee shall immediately notify Licensor of any Toxic Substance at any time discovered or existing upon the Right-of-Way. Licensee is not responsible for Toxic Substances that may exist at the Right-of-Way if Licensee, Licensee's contractors, and other persons using the Right-of-Way under this Agreement did not knowingly or negligently do any of the following:

4.12.5.1 Participate in the Toxic Material coming to the Right-of-Way.

4.12.5.2 Fail to immediately report the Toxic Material to Licensor.

4.12.5.3 Participate in spreading or otherwise disturbing the Toxic Material.

4.12.5.4 Exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material.

4.12.6 Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee acknowledges the possibility that the Right-of-Way may contain actual or presumed asbestos and other Toxic Substances containing materials.

4.12.7 Within twenty-four (24) hours after any violation by Licensee of this Agreement pertaining to Toxic Substances, Licensee shall give Licensor notice reporting such violation.

4.13 Communications Operations Restriction. Licensee shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of Licensor's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Licensee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Licensee takes corrective measures to alter the Private Plant to eliminate such interference. Any such corrective measures shall be made at no cost to Licensor.

4.14 Actions by Others. Licensee shall cause to comply with this Agreement all persons using the Right-of-Way through or under Licensee or this Agreement. Licensee is responsible for any violations of this Agreement by persons using the Right-of-Way through or under Licensee or this Agreement.

V. IMPROVEMENTS BY LICENSOR

5. Improvements by Licensor. Licensor has not promised to and is not obligated in any manner to make any improvements or perform any other construction or other work at the Right-of-Way.

VI. LICENSEE'S IMPROVEMENTS GENERALLY

6. Licensee's Improvements Generally. All of Licensee's improvements and other construction work whether or not specifically described herein upon the Right-of-Way (collectively "Licensee's Improvements") shall comply with the following:

6.1 Construction Plans. Annually, and upon reasonable request with at least thirty (30) days prior written notice by the City Manager or designee from time to time, Licensee shall deliver to Licensor route maps showing plans for existing and proposed construction of the Private Plant along arterials and other principal streets and public ways within the City.

6.2 Permits and Inspections. Prior to performing work upon the Right-of-Way, Licensee shall submit all work plans to Licensor for review by Licensor's staff in designated departments responsible for such review and shall obtain all permits and other approvals related thereto. During the course of the work, Licensee shall observe inspection, safety and other rules.

6.3 Licensee's Improvements. Licensee's Improvements include, without limitation all modification, replacement, repairs, installation, construction, grading, structural alterations, utility, lighting or other alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description, together with all installation or alteration of the Private Plant.

6.4 Regulatory Approval Process. The building permit processes, right-of-way management and similar regulatory requirements that apply to Licensee's Improvements are completely separate from the requirements of this Agreement. Licensee's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Licensee's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. Licensee must make all submittals and communications regarding the requirements of this Agreement through Licensor's contract administrator for this Agreement, and not through planning, building safety or other staff. Licensee must obtain all approvals in accordance with all present and future Licensor codes, policies and procedures.

6.5 Relationship of Plans Approval to Regulatory Processes. Licensee's submission of plans under this Agreement, Licensor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT.

6.6 Work Standards. All work by Licensee under this Agreement shall conform to the standards of the Maricopa Association of Governments and of the City of Scottsdale Design Standards and Practices Manual, as either may be amended from time to time. All construction by Licensee must comply with applicable Right-of-Way noise, light, timing, event planning, dust and other policies in effect from time to time.

6.7 Cost of Licensee Improvements. All Licensee's Improvements shall be designed and constructed at no expense to City. In no event, including without limitation

termination of this Agreement for any reason, shall Licensor be obligated to compensate Licensee in any manner for any of Licensee's Improvements or other work provided by Licensee during or related to this Agreement. Licensee shall pay, protect, indemnify, defend and hold harmless Licensor and Licensor's employees, officer's, contractors and agents against all claims related to labor, materials, professional services and other work for Licensee's Improvements. Licensee shall bear the cost of all work required from time to time to cause the Right-of-Way and other nearby property owned by Licensor to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Licensee, by Licensee's use of the Right-of-Way, or by any exercise of the rights granted to Licensee under this Agreement.

6.8 Improvement Quality. Any and all work performed on the Right-of-Way by Licensee shall be performed in a workman-like manner as reasonably determined by Licensor and shall be diligently pursued to completion and in conformance with all building codes and similar rules.

6.9 Damage During Work. Upon performing any work upon the Right-of-Way, Licensee shall simultaneously restore the Right-of-Way to its prior condition, as directed by Licensor and repair any holes, mounting surfaces or other damage whatsoever caused by Licensee's activities to the Right-of-Way. Such work shall include revegetation and repairing or replacing pre-existing irrigation systems for revegetated areas, if applicable.

6.10 Restoration. Following installation, repair or replacement work performed in the Use Areas, Licensee shall restore disturbed areas of the Use Areas to a condition equal to or better than the condition of the Use Areas immediately prior to Licensee's activities. The preceding sentence does not require Licensee to repair or maintain Licensor's or third party facilities at the Use Area unless such work is attributable in whole or in part to Licensee's use of the Use Area. Licensee shall repair or replace to Licensor's standards, rules and policies published from time to time all pavement, sidewalks, curbs, landscaping and other Licensor's improvements of any description that may be damaged in the course of Licensee's activities under this Agreement.

6.11 Coordination with Encroachment Permit Process. This Agreement serves as an encroachment permit to the extent of granting permission from Licensor for Licensee's private improvements to exist in the Use Areas. Licensee shall not be required to obtain any further encroachment permit for the Private Plant for that purpose. However, Licensee shall perform no construction work in the Use Areas without obtaining through normal processes from Licensor a permit giving permission to work in the Right-of-Way. Licensee shall not alter or perform any work to Licensor's improvements without first obtaining through normal processes from Licensor a permit giving permission to alter Licensor's improvements. Licensee shall not obstruct traffic without obtaining through normal processes from Licensor a permit granting permission to obstruct traffic. In case of emergencies, Licensee may commence work before obtaining additional permits to the extent, if any, allowed by Licensor's permit process from time to time. The foregoing notwithstanding, Licensor reserves the right to limit the number and scope of permits that may be active at any given time to ensure the work performed pursuant to this Agreement does not unreasonably obstruct traffic or otherwise harm public health and welfare. The City's right to limit the number and scope of active permits for any work performed pursuant to this Agreement may be exercised at Licensor's sole discretion but shall not be exercised unreasonably.

6.12 Work Classifications. All Lessee's Improvements and other construction, repair, maintenance and other work (collectively "Work") shall be divided into three categories ("Heavy Work", "Medium Work" and "Light Work"):

6.12.1 Heavy Work is any work that involves any of the following:

6.12.1.1 Complete blockage of a sidewalk or trail.

6.12.1.2 Any Work or construction signage closer to the center of a street than the edge of pavement or back of curb.

6.12.1.3 Any Work that involves workers or equipment within thirty (30) feet of an intersection measured from the closest edge of pavement or back of curb.

6.12.1.4 Any Work that does or is projected to take more than seven (7) days to complete.

6.12.1.5 Any Work that involves excavating more than five (5) cubic yards of dirt, digging more than three hundred (300) feet of trench, or any boring.

6.12.1.6 Any Work that involves any traffic breaks, diversions or interruptions, any temporary or permanent alteration of traffic signals or signs or other traffic control devices, or any rerouting of any traffic.

6.12.2 Medium Work is all Work that is not Heavy Work but involves workers or equipment being used or located within ten (10) feet of any portion of any public street right-of-way designated for vehicular travel, within one hundred (100) feet of the nearest part of any intersection measured from the closest edge of pavement or back of curb, or upon or interfering in any way with any sidewalk, path or trail.

6.12.3 Light work is Work that is not Medium Work or Heavy Work.

6.13 Street Classifications. All Right-of-Way shall be divided into three categories ("Critical Streets", "Large Streets", and "Small Streets") as follows:

6.13.1 Critical Streets are all of the Scottsdale Road, Hayden Road, Pima Road and Shea Boulevard Right-of-Way and all Right-of-Way within one hundred (100) feet of the Right-of-Way of any of these roads. During January and February, Critical Streets also include Frank Lloyd Wright Boulevard, Bell Road, Princess Drive and Perimeter Center Drive. Critical Streets are only the streets named in this paragraph and do not include other streets encircled by or near the Critical Streets.

6.13.2 Large Streets are all streets shown on Scottsdale's General Plan as Major Arterials, Minor Arterials or Collectors.

6.13.3 Small Streets are all Route Right-of-Way that is not Critical Streets or Large Streets.

6.14 Light Work Restrictions. All Light Work shall comply with the following:

6.14.1 Licensee shall obtain all permits.

6.14.2 Licensee shall not perform Light Work to Critical Streets during the hours of 6 a.m. to 9 a.m. or 4 p.m. to 7 p.m. Monday through Friday (collectively "Rush Hours").

6.15 Medium Work Restrictions. All Medium Work shall comply with all of the restrictions applicable to Light Work and also with the following:

6.15.1 Licensee shall give Licensor ten (10) days advance notice of any Medium Work.

6.15.2 Licensee shall not perform Medium Work to Critical Streets or Large Streets during Rush Hours.

6.16 Heavy Work Restrictions. All Heavy Work shall comply with all of the restrictions applicable to Medium Work and Light Work and also with the following:

6.16.1 Heavy Work is prohibited on Critical Streets during the period from November 15 to April 30.

6.16.2 Licensee shall give Licensor ten (10) days advance notice of any Heavy Work.

6.16.3 Licensee's giving notice under this paragraph is not a substitute for obtaining Licensor's approval of the proposed work.

6.17 Work Restriction Waivers. Licensor's contract administrator shall have authority but not an obligation to grant written exceptions to the provisions of this Agreement that limit the days or times during which Licensee may conduct Work.

6.18 Data Deliverables. Within ninety (90) days after the installation of any segment of the communications network as defined on the License Agreement, the Licensee shall supply the City with electronic files showing the installed location of the fiber optic cable associated with the communication network in a format agreed by the City. The current required format for the electronic files shall be ESRI file geodatabase or shapefile format. The data shall be provided in NAD 1983 StatePlane Arizona Central FIPS 0202 (Intl Feet) == WKID 2868, or another mutually agreed upon format. Licensee shall supply GIS data attributes in a schema provided by the City, and within an accuracy of no less than three (3) feet for all components of the communication system. Upon prior approval by the City Telecommunications Policy Coordinator, Licensee may provide electronic files in a different electronic format or transfer the files to the City via email or file transfer protocol (FTP). The City will use data for project coordination.

VII. LICENSEE'S INITIAL PROJECT CONSTRUCTION

7. Licensee's Initial Project Construction. Licensee is not required to construct any portion of the Private Plant by any particular deadline.

VIII. MAINTENANCE AND OPERATIONS

8. Maintenance and Operations. Except as expressly provided below, Licensee shall be solely responsible for all maintenance, repair and utilities for the Private Plant during the term of this Agreement. Without limitation, Licensee shall perform the following:

8.1 Right of Inspection. Licensor shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement, the Street Code, or other Telecommunications Laws.

All Licensor plans reviews, inspections, standards and other rights and actions with relation to Licensee's Improvements are for Licensor's sole and exclusive benefit and neither Licensee nor any other person shall rely thereon or have any rights related thereto.

8.2 Identification. All Licensee employees, contractors and subcontractors shall wear on their clothing a clearly visible identification card bearing their name and photograph and Licensee's logo or name, or the name or logo of Licensee's contractor or subcontractor. Licensee shall account for all Licensee issued identification cards at all times. Every service vehicle of Licensee, its contractors and its subcontractors shall be clearly identified as such to the public. Licensee vehicles shall prominently display Licensee's name and logo. Other vehicles shall prominently display the contractor's or subcontractor's name.

8.3 Construction Notification. Licensor may establish requirements for Licensee to notify nearby residents prior to construction.

8.4 Maintenance by Licensor. Licensor has no maintenance or repair obligations for the Use Areas.

8.5 Maintenance by Licensee. Licensee shall at all times repair and maintain the Private Plant at the Use Areas at Licensee's sole expense in a sound, clean, safe manner, meeting or exceeding best industry practices of maintenance of comparable facilities in the southwest United States as determined in Licensor's discretion.

IX. BREACH BY LICENSEE

9. Breach by Licensee. Licensee shall comply with the terms and provisions of this Agreement and shall cause all persons using the Use Areas under the authority granted Licensee by this Agreement to do the same. Licensee's failure to do so shall be a material breach by Licensee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Licensee of Licensee's material obligations under this Agreement:

9.1.1 If Licensee shall be in arrears in the payment of Fee Payment due and not paid or disputed and shall not cure such arrearage within ten (10) days after Licensor has notified Licensee in writing of such arrearage.

9.1.2 If Licensee shall fail to keep the Certificate in effect.

9.1.3 If Licensee shall fail to maintain any insurance required by this Agreement.

9.1.4 If Licensee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's or such other person's property shall be made for the benefit of creditors or if Licensee or such other person dies or is not regularly paying its debts as they come due (collectively a "Licensee Insolvency").

9.1.5 If Licensee shall fail to comply with the Site Documents and shall not cure such noncompliance before the earlier of:

9.1.5.1 The date such non-compliance causes any harm to Licensor.

9.1.5.2 The date within sixty (60) days after Licensor gives Licensee written notice of such noncompliance.

9.1.6 If the issuer of any letter of credit shall fail for any reason to timely and fully honor any request by Licensor for funds or other performance under the instrument and Licensee fails to cause the issuer to or some other person to honor the request within ten (10) days after Licensor notifies Licensee in writing that such request has not been honored.

9.1.7 If Licensee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Right-of-Way or timely pay any taxes pertaining to the Right-of-Way and shall not cure such failure within sixty (60) days of written notice thereof.

9.1.8 If Licensee shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Licensor has once given notice of any failure by Licensee to comply with any provision of this Agreement, the following shall constitute a repeated failure by Licensee to comply with such provision:

9.1.8.1 Another failure to comply with any provision of this Agreement during the following thirty (30) day period, or diligently pursue a cure if such cure reasonably requires additional time.

9.1.8.2 Three (3) or more failures to comply with any provision of this Agreement during any ninety (90) day period.

9.1.8.3 Six (6) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

9.1.9 If Licensee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of sixty (60) days after Licensor has notified Licensee in writing of such failure or neglect.

9.1.10 In the event a cure cannot be effected during any period described above, Licensee shall not be in default so long as Licensee commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after the notice.

9.2 Licensor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Licensor may, at its option and from time to time, exercise at Licensee's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Licensor's option:

9.2.1 Terminate this Agreement. Termination of this Agreement due to Licensee's breach or for any other reason does not terminate Licensee's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Licensee's liability related to any breach of this Agreement. City shall not use such termination power without first conducting a hearing before its City Manager or designee upon fifteen (15) days written notice to Licensee, at which Licensee may appear and present evidence. The person conducting the hearing shall state in writing his or her determination of the validity of the proposed termination and shall summarize his or her findings on the controversy. Such findings may be appealed by Licensor

or Licensee to a court for de novo review. In order to give the parties time to consider entering into a new agreement or otherwise dealing with the termination, any termination under this paragraph shall not take effect until the earlier of the date Licensee commences a court proceeding or ninety (90) days after the hearing.

9.2.2 Pay or perform, for Licensee's account, in Licensee's name, and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee.

9.2.3 Abate at Licensee's expense any violation of this Agreement.

9.2.4 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Licensee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security pledged for Licensor's benefit pursuant to this Agreement and use the proceeds for any remedy permitted by this Agreement.

9.2.5 Be excused without any liability to Licensee therefor from further performance of any or all obligations under this Agreement.

9.2.6 Insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.7 Require an additional security deposit adequate in Licensor's sole discretion to protect Licensor and the Right-of-Way in light of Licensee's history of performance under this Agreement.

9.2.8 Assert, exercise or otherwise pursue at Licensee's expense any and all other rights or remedies, legal or equitable, to which Licensor may be entitled, subject only to the limitation set out below on Licensor's ability to collect money damages in light of the Violation Fee Payment.

9.3 Violation Fee Payment. In lieu of certain money damages (the "Inconvenience Costs") set out below, the following shall apply to Licensee's violation of certain limited requirements of this Agreement (the "Violation Fee Provisions"):

9.3.1 The Inconvenience Costs are the money damages that Licensor suffers in the form of administrative cost and inconvenience, disharmony among Competing Users, and general inconvenience in Right-of-Way use by Licensor, Competing Users and the public when Licensee fails to comply with the Violation Fee Provisions.

9.3.2 Licensee's failure to comply with Violation Fee Provisions will result in Inconvenience Costs in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that, in lieu of Licensee paying to Licensor as damages the actual amount of the Inconvenience Costs for violating the Violation Fee Provisions, Licensee shall pay Violation Fee Payment.

9.3.3 Violation Fee Payment is only intended to remedy Inconvenience Costs that Licensor suffers because of Licensee's breach of the Violation Fee Provisions. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this Agreement.

or limit in any way Licensee's obtaining any other legal or equitable remedy provided by this Agreement or otherwise or such breach. For example, Licensee's obligation to pay Violation Fee Payment does not in any way detract from Licensee's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Licensee's obligation to pay Violation Fee Payment.

9.3.4 Except as may be expressly stated in this paragraph, no cure period applies to the accrual of Violation Fee Payment.

9.3.5 Licensee may elect to draw upon the letter of credit to collect the Violation Fee Payment.

9.3.6 The Violation Fee Provisions and the amount of the Violation Fee Payment per day or part thereof are as follows:

9.3.6.1 The amount of One Hundred Fifty Dollars (\$150.00) per day for Licensee's failure to properly restore the public right-of-way or to correct related violations of specifications, code, ordinance or standards within ten (10) business days after Licensor's notice to correct such defects. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the right-of-way or correct the violation.

9.3.6.2 The amount of Two Hundred Fifty Dollars (\$250.00) per day for each failure to make Licensee's books and records available as required by this Agreement.

9.3.6.3 The amount of Five Thousand Dollars (\$5,000.00) for any unauthorized partial or total assignment of this Agreement.

9.3.6.4 The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Licensee contrary to this Agreement that causes Inconvenience Costs and that is not cured after three (3) days notice.

9.3.7 Violation Fee Payments shall be assessed as follows:

9.3.7.1 If Licensor determines that Licensee is liable for Violation Fee Payment, then Licensor shall issue to Licensee a notice of Licensor's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.

9.3.7.2 Licensee shall pay the Violation Fee Payment within ten (10) days after Licensor's notice. However, if the Violation Fee Payment amount exceeds Five Thousand Dollars (\$5,000), then the following shall apply:

9.3.7.2.1 Licensee shall have thirty (30) days after the notice to pay the Violation Fee Payment or give Licensor notice contesting the assertion of noncompliance.

9.3.7.2.2 If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment. Otherwise, Licensor shall schedule a hearing to investigate whether the Violation Fee Payment is properly assessed. Licensor's City Manager or designee shall preside over the hearing. Licensor shall provide Licensee at least ten (10) days notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, Licensee shall be provided an opportunity to be heard and present evidence. If the result of the

hearing is that Licensee is liable for Violation Fee Payment, then the Violation Fee Payment is due ten (10) days after the hearing decision is announced.

9.3.7.2.3 Licensee may appeal the outcome of the hearing to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days after the issuance of Licensor's determination. Otherwise, the outcome of the hearing shall be final and conclusive.

9.4 Effect of Abandonment. In addition to Licensor's other rights, if Licensee abandons the Private Plant during the term of this Agreement, or fails to operate the Private Plant in accordance with its duty to provide continuous service, Licensor, at its option, may seek an injunction requiring Licensee to continue operations or an order requiring Licensee to transfer title of the abandoned plant to Licensor. If Licensee abandons only part of the Private Plant, then this paragraph shall apply to the part abandoned. Any part of the Private Plant shall be deemed to be abandoned if Licensee fails to respond in the affirmative within sixty (60) days to a written notice from Licensor requesting that Licensee confirm that Licensee is maintaining and utilizing that part of the Private Plant in its operations. In its discretion, Licensor may require Licensee to provide evidence of use of that part of the Private Plant in question.

9.5 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by either Party to demand any performance required of the other Party under this Agreement, and no acceptance by either Party of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way such Party's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensor of Fee Payment payments or other performances hereunder shall be deemed a compromise or settlement of any right Licensor may have for additional, different or further payments or performances. Any waiver by a Party of any breach of condition or covenant herein contained to be kept and performed by the other Party shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent such Party from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Licensor or Licensee concerning payments or other performances due hereunder, or failure by Licensor to demand any performance hereunder, shall excuse Licensee from compliance with this Agreement nor estop Licensor (or otherwise impair Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against a Party unless made in writing by a duly authorized representative of the Party specifically identifying the particular provision being waived and specifically stating the scope of the waiver. BOTH PARTIES EXPRESSLY DISCLAIM AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.6 Reimbursement of Licensor's Expenses. Licensee shall pay to Licensor within thirty (30) days after Licensor's written demand any and all amounts expended or incurred by Licensor in performing Licensee's obligations after an Event of Default together with interest thereon at the rate of twelve percent (12%) per annum from the date expended or incurred by Licensor.

9.7 Inspection. Licensor shall have access to all portions of the Use Areas at all times and without notice for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Use Areas or exercising Licensor's other rights hereunder.

Licensee shall promptly undertake appropriate action to rectify any deficiency (identified by Licensor during such inspections or otherwise) in Licensee's compliance with this Agreement. This paragraph does not limit Licensor's other rights of access to the Use Areas elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Licensor inspectors or other employees and officers acting within their legal authority.

9.8 Breach by Licensor. Notwithstanding anything in this Agreement to the contrary, if Licensor at any time is required to pay to Licensee any amount or render any performance, such amount or performance is not due until thirty (30) days after written notice by Licensee to Licensor that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, Licensor shall not be in default so long as Licensor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after the notice.

9.9 Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, Licensor shall have the right to setoff and credit from time to time and at any time, any and all amounts due from Licensee to Licensor, whether pursuant to this Agreement or otherwise, against any sum which may be due from Licensor to Licensee pursuant to this Agreement or otherwise.

X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement (taking into account any extensions of this Agreement):

10.1 Surviving Obligations. Expiration of this Agreement (or Licensor's termination of this Agreement due to an Event of Default or any other reason) does not terminate Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

10.2 Delivery of Possession. Licensee shall cease using the Use Areas. Licensee shall without demand, peaceably and quietly quit and deliver up the Use Areas to Licensor in as good order and condition, reasonable use and wear excepted, as the Use Areas may now be in or in such better condition as the Use Areas may hereafter be placed.

10.3 New Approvals and Agreements. Upon expiration or termination of this Agreement for any reason, Licensee shall no longer have the right to use the Right-of-Way. After such period, any right, if any, for the Private Plant to be in the Right-of-Way shall be pursuant to such new approvals and agreements, if any, and not pursuant to this Agreement.

10.4 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Licensee shall provide to Licensor upon demand a confirmation of termination of this Agreement executed and acknowledged by Licensee and by all persons who claim that they have received from or through Licensee any interest in or right to use the Right-of-Way.

10.5 Removal of Improvements. NOTWITHSTANDING anything in this paragraph or the remainder of this Agreement to the contrary, unless Licensor directs otherwise, Licensee shall leave the cable, conduits, other appurtenances, and the remainder of the entire Private Plant in place in good condition, in working order, with each cable and conduit end properly labeled and enclosed in proper junction boxes, and in safe condition. However, to the extent Licensor gives

notice requesting the work, Licensee shall remove all of the Private Plant and restore the Use Areas to its prior condition, or to a condition matching Licensor's surrounding land and improvements. Notwithstanding the preceding sentence, Licensee is not obligated to remove horizontal underground conduit, along with cables that are buried directly in the ground without conduits. Such work shall include revegetation and appropriate irrigation systems for revegetated areas. Title to any and all personal property installed by Licensee upon the Right-of-Way that is not removed during that period shall automatically vest in Licensor. Licensor shall give Licensee One Hundred Twenty (120) days' notice before requiring removal of the Private Plant.

XI. INDEMNITY AND INSURANCE

11. **Insurance Responsibility.** During the entire term of this Agreement, Licensee shall insure its property and activities at and about the Use Areas and shall provide insurance and indemnification as follows:

11.1 **Insurance Required.** Not later than the date of this Agreement, and at all times thereafter when Licensee is occupying or using the Use Areas in any way, Licensee shall obtain and cause to be in force and effect the following insurance:

11.1.1 **Commercial General Liability.** Commercial general liability insurance with a limit of Five Million and No/100 Dollars (\$5,000,000.00) for each occurrence, a limit of Five Million and No/100 Dollars (\$5,000,000.00) for products and completed operations annual aggregate, and a limit of Five Million and No/100 Dollars (\$5,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy will cover Licensee's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.

11.1.2 **Automobile Liability.** Automobile liability insurance with a limit of One Million Dollars (\$1,000,000) for each accident covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Licensee's use of the Right-of-Way. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and offloading.

11.1.3 **Workers' Compensation.** Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) for each accident, One Hundred Thousand Dollars (\$100,000.00) disease for each employee, Five Hundred Thousand Dollars (\$500,000.00) policy limit for disease. All contractors and subcontractors must provide like insurance.

11.2 **Policy Limit Escalation.** Licensor may elect by notice to Licensee to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Licensor reasonably determines to affect the prudent amount of insurance to be provided.

11.3 **Form of All Insurance.** All insurance provided by Licensee with respect to the Right-of-Way, whether required by this Agreement or not, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted, except for Broadcast Insurance.

11.3.2 If Licensee uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.3.3 Policies must also cover and insure Licensee's activities relating to the business operations and activities conducted away from the Right-of-Way.

11.3.4 Licensee must clearly show by providing copies of insurance certificates or formal endorsements acceptable to Licensor that all insurance coverage required by this Agreement is provided.

11.3.5 Licensee's required insurance shall be primary insurance with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.6 All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against Licensor and Licensor's employees, officials, representatives, officers and agents (all of whom, including Licensor, are collectively "Additional Insureds").

11.3.7 All deductibles, retentions, or "self-insured" amounts shall be subject to the following:

11.3.7.1 Licensee shall be solely responsible for all such amounts.

11.3.7.2 Such amounts shall not exceed in total Five Hundred Thousand Dollars (\$500,000.00) per loss. At such times as Licensee's net worth is more than One Hundred Million Dollars (\$100,000,000.00), such limit shall be One Million and No/100 Dollars (\$1,000,000.00).

11.3.7.3 Any self-insured exposure shall be deemed to be an insured risk under this Agreement.

11.3.7.4 Licensee's obligation to reimburse an insurer after the Insurer defends and pays a claim is not a deductible, retention or "self-Insured" amount for purposes of this paragraph.

11.3.7.5 Licensee shall provide to the beneficiaries of all such amounts no less insurance protection than if such self-insured portion was fully insured by an insurance company of the quality and caliber required hereunder.

11.3.7.6 The right to self-insure is limited and specific to Licensee and does not extend to Licensee's contractors or others.

11.3.8 All required policies except workers' compensation must include Licensor and the other Additional Insureds as additional insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.9 Licensee shall provide Licensor with at least thirty (30) days prior notice of any cancellation.

11.4 Insurance Certificates. Licensee shall evidence all required insurance by furnishing to Licensor certificates of insurance upon inception of this Agreement and with each change in

insurance coverage. Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Licensor and the other Additional Insureds are additional insureds. Certificates must be in a form acceptable to Licensor. Licensee shall provide updated certificates at Licensor's request.

11.5 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Licensor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

11.6 No Representation of Coverage Adequacy. By requiring insurance herein, Licensor does not represent that coverage and limits will be adequate to protect Licensee. Licensor reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, Licensee's obligation to maintain the required insurance at all times.

11.7 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Licensee (and all other persons using, acting, working or claiming through or for Licensee or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally indemnify, defend and hold harmless Licensor and all other Additional Insureds for, from and against any and all claims or harm related to Licensee's use of the Right-of-Way or the rights granted to Licensee with respect to the Right-of-Way or Licensee's exercise of its rights under this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Right-of-Way or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Right-of-Way or surrounding areas related to this Agreement under the authority of Licensee, including without limitation, claims, liability, harm or damages caused in part by Licensor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Licensee or Licensor may be liable. As a condition to Licensor's executing this Agreement, Licensee specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Licensee for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Licensee's use of real property under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.7.1 Claims arising only from the sole gross negligence or intentionally wrongful acts of Licensor.

11.7.2 Claims that the law prohibits from being imposed upon the indemnitor.

11.8 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the Right-of-Way or other property of Licensor, Licensee or third parties throughout the term hereof. Licensee shall be responsible for any and all damage to its property and equipment related to this Agreement.

11.9 Insurance to be Provided by Others. Licensee shall cause its contractors or other persons occupying, working on or about, or using the Right-of-Way pursuant to this Agreement to be covered by their own or Licensee's insurance in the amounts and coverages required by this Agreement and conforming to the other requirements of this Agreement.

XII. CONDEMNATION

12. Condemnation. The following shall govern any condemnation of any part of or interest in the Use Areas and any conveyance to Licensor or another condemnor in avoidance or settlement of condemnation or a threat of condemnation:

12.1 Termination for Condemnation. This Agreement shall terminate as to the part taken on the date that is the earlier of the date title vests in the condemnor, or the date upon which the condemnor is let into possession.

12.2 Power to Condemn. Licensee acknowledges that Licensor and others from time-to-time may use the power to condemn the Use Areas or any interest therein or rights thereto. Licensor has not relinquished any right of condemnation or eminent domain over the Use Areas. Licensor does not warrant that Licensor will not condemn the Use Areas during the term of this Agreement, but Licensor does not presently have intentions to condemn the Use Areas.

XIII. DAMAGE TO USE AREAS

13. Damage to Use Areas. In the event of damage to or destruction of the Private Plant by fire, explosion, the elements, the public enemy, or other casualty, Licensee shall commence restoring the casualty damage within thirty (30) days. Licensee shall complete the restoration work within one hundred and twenty (120) days after commencing the restoration work. Licensee's restoration work shall be subject to the plan approval process and all other requirements for Licensee's Improvements. Licensee shall perform all restoration work at Licensee's sole cost and expense. Licensee shall provide to Licensor no later than the tenth day of each month a written report of the progress of the restoration work.

XIV. LICENSEE'S RECORDS

14. Licensee's Records. During the entire term of this Agreement, Licensee shall keep records and provide information to Licensor as follows:

14.1 Scope of Information. Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations under this article include and are limited to the following cumulative topics as reasonably determined by Licensor (collectively the "Covered Information"):

14.1.1 The status of the construction, repair or restoration of Licensee Improvements.

14.1.2 Information relating to this Agreement or to Licensor's or Licensee's rights or obligations under this Agreement.

14.2 Records Inspection. Licensee shall:

14.2.1 Permit and assist Licensor and its representatives at all reasonable times to inspect, audit, and copy Licensee's records of Covered Information.

14.2.2 Make the records of Covered Information (and reasonable accommodations for Licensor's audit and inspection) available to Licensor at Licensee's offices in Maricopa County, Arizona.

14.2.3 Cause Licensee's employees and agents and accountants to give their full cooperation and assistance in connection with Licensor's access to the Covered Information.

14.3 Record Retention. Licensee shall preserve records of the Covered Information in a secure place at Licensee's corporate headquarters in the continental United States and available to Licensor on request for review within the City of Scottsdale, Maricopa County, Arizona for a period ending seven (7) years after the time period reported by the records.

14.4 Record Media Included. Licensor's and Licensee's rights and obligations regarding the Covered Information apply regardless of the type of media, materials, or data repositories that may contain the Covered Information. Licensor's rights to the Covered Information apply regardless of whether the Covered Information is stored on recordings, notes, ledgers, correspondence, reports, drawings, memoranda, or other repository of Covered Information.

14.5 Costs of Audit. If an audit, inspection or examination discloses underpayments (or other matters adjusted in favor of Licensor) of any nature that exceed five percent (5%) of any payments or single payment, Licensee shall pay to Licensor Licensor's actual cost (based on the amount paid by Licensor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the examination is performed by Licensor's employees) of the examination, together with late fees, interest, and other amounts payable in connection with such adjustments or payments. Any adjustments and/or payments due as a result of any such examination shall be made within a reasonable amount of time (not to exceed 30 days) after Licensor gives to Licensee notice of Licensor's findings.

14.6 Reports. Upon not less than thirty (30) days' notice, Licensee shall deliver to Licensor written reports (and, if requested by Licensor, a presentation to Licensor's governing council or designee) covering such Covered Information as Licensor may request from time to time. Unless Licensor has a basis for believing that Licensee might not be in compliance with this Agreement, Licensor shall not make more than one such request covering the same information in any twelve (12) month period.

14.7 Standards for Records. Licensee shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with generally accepted accounting principles applied on a consistent basis.

14.8 Proprietary Information. Proprietary Information disclosed by Licensee to the Licensor or its constituent departments shall be regarded as Proprietary as to third parties. If the Licensor receives a request to disclose such information, the Licensor shall notify Licensee of such request and allow Licensee a reasonable opportunity to defend its information from disclosure. Any proprietary information that Licensee discloses to Licensor must be clearly marked as information that Licensee deems proprietary. Information that is already in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the Licensor shall only disclose those portions within the public domain. Notwithstanding any provision in this License, Licensee acknowledges and understands that the Licensor is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 *et. seq*) and specifically that this Agreement itself must be approved by the Scottsdale City Council in an open public meeting as required by such laws.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Licensee shall perform its obligations under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Licensee shall comply with all and each of the following:

15.1 Future Municipal Legislation. Licensor has not contracted away any of its legislative authority by this Agreement.

15.2 Applicability of Municipal Law. Without limitation, Licensee shall comply with municipal laws as follows:

15.2.1 Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Licensee, the Right-of-Way or Licensee's use of the Right-of-Way.

15.2.2 All of Licensee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Licensee.

15.2.3 This Agreement is not intended to diminish any performances that would be required of Licensee by law if this Agreement had been made between Licensee and a private citizen.

15.2.4 Licensor by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over the Right-of-Way or any other property related to this Agreement or within the Right-of-Way.

15.2.5 Licensor's rights and remedies hereunder for Licensee's failure to comply with all applicable Telecommunications Laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.3 Building and Other Permits. Licensee shall obtain at its own expense all building or other permits in connection with all construction performed by Licensee, shall comply with all

zoning, building safety, fire, pavement and curb cut and restoration, and similar laws and procedures of every description and shall pay all fees, charges and other amounts pertaining thereto.

15.4 Encroachment Permit. This Agreement constitutes an "encroachment permit" under Chapter 47 of the Scottsdale Revised Code to the extent of allowing the Private Plant to exist on the Right-of-Way but not to allow any construction or other work of any description in the Use Areas or to allow obstruction of traffic or alternation of Licensors improvements. Before performing any work on the Right-of-Way, Licensee shall obtain the following additional encroachment permits, as applicable:

15.4.1 Permission to Work in the Right-of-Way.

15.4.2 Permission to Alter City Improvements.

15.4.3 Permission to Obstruct Traffic.

15.4.4 Any other applicable permits regarding work in the Right-of-Way.

15.5 Taxes, Liens and Assessments. In addition to all other amounts herein provided and to the extent consistent with applicable law, Licensee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Licensee's use of the Right-of-Way, Licensee's operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all of Licensee's possessory interest in the Right-of-Way and improvements and other Licensor or Licensee property thereon. Licensee shall pay, indemnify, defend and hold harmless Licensor and the Right-of-Way and all interests therein and improvements thereon from any and all such obligations, including any interest, penalties and other expenses which may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof.

15.6 Change in Law. If a provision of this Agreement is affected by subsequent legislative action, this Agreement shall continue in force to the extent possible.

15.7 Use Area Regulations. Licensor reserves the right to adopt, amend and enforce against Licensee ordinances, rules and regulations governing the operation of the Use Areas, Licensee's activities therein and thereon, and the public areas and facilities used by Licensee in connection therewith.

15.8 Permits. This Agreement does not relieve Licensee of the obligation to obtain permits, licenses and other approvals from Licensor or other units of government that are required for the erection, construction, reconstruction, installation, operation or maintenance of the Private Plant or provision of Telecommunications Services; or from compliance with applicable municipal codes, ordinances, laws and policies, such as zoning and land use ordinances and regulations, pavement cut and restoration ordinances and regulations, subdivision and project improvement ordinances, curb cut permits, building permits, right-of-way permits and the like.

XVI. ASSIGNABILITY

16. **Assignability.** This Agreement is not assignable by Licensee (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

16.1 **Assignments Affected.** Every assignment of any of Licensee's interest in the Right-of-Way or this Agreement or any of Licensee's rights or interests hereunder is prohibited unless Licensee first receives from Licensor notice of Licensor's consent to the assignment. All references in this Agreement to assignments by Licensee or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

16.1.1 Any voluntary or involuntary assignment, conveyance or transfer of the Right-of-Way or any interest therein or any rights under this Agreement, in whole or in part.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting Licensee's rights to use the Right-of-Way (collectively "Liens").

16.1.3 Any assignment by Licensee of any interest in this Agreement for the benefit of creditors, voluntary or involuntary.

16.1.4 A Licensee Insolvency.

16.1.5 The occurrence of any of the foregoing by operation of law or otherwise.

16.1.6 The occurrence of any of the foregoing with respect to any assignee or other successor to Licensee.

16.1.7 **Affiliate Use.** Any use of the Private Plant or exercise of any rights under this Agreement by any Affiliate of Licensee shall be deemed an assignment requiring Licensor's prior written consent unless expressly permitted under Section 4.4 solely for the purpose of transmitting data over the Private Plant. No Affiliate arrangement that results in an Affiliate having effective operational control over the Private Plant or directing its construction or expansion shall be deemed permitted under Section 4.4, regardless of how such arrangement is structured.

16.2 **Pre-approved Assignments.** Subject to certain conditions hereafter stated, Licensor hereby consents to certain assignments (the "Pre-approved Assignments"). Only the following assignments are Pre-approved Assignments:

16.2.1 **Complete Sale of Private Plant.** Licensee's complete assignment of all of Licensee's rights and Interests in the Right-of-Way and this Agreement to a single assignee who meets all of the following requirements, as determined by Licensor in Licensor's reasonable discretion (a "Qualified Operator"):

16.2.1.1 The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Licensee's and adequate to successfully perform under this Agreement.

16.2.1.2 The assignee is experienced in the management and operation of similar projects.

16.2.1.3 The assignee assumes all of Licensee's obligations relating to this Agreement.

16.2.1.4 The assignee has a net worth of not less than One Billion and No/100 Dollars (\$1,000,000,000.00).

16.2.2 Stock Transfers. The transfer of publicly traded stock, regardless of quantity.

16.2.3 Merger. The merger or consolidation of Licensee with another entity that is a Qualified Operator.

16.2.4 Common Ownership Transfer. Licensee's complete assignment of all of Licensee's rights and interests in the Right-of-Way and this Agreement to single assignee who is and remains either a wholly owned subsidiary of Licensee (or a wholly owned subsidiary of a wholly owned subsidiary of such named entity).

16.3 Limitations on Assignments. Licensors consent to any assignment, including without limitation, Pre-approved Assignments, is not effective until the following conditions are satisfied:

16.3.1 Except for the sale of stock, Licensee shall provide to Licensors a complete copy of the document assigning this Agreement.

16.3.2 Each assignee must execute an assumption of this Agreement in form acceptable to Licensors.

16.3.3 Each Pre-approved Assignment must satisfy all other requirements of this Agreement pertaining to assignments.

16.4 Assignment Remedies. Any assignment without Licensors consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement. Licensors may, in its sole discretion and in addition to all other remedies available to Licensors under this Agreement or otherwise, and in any combination, terminate this Agreement, collect Fee Payment from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of Licensors under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive Licensors consent.

16.5 Effect of Assignment. Prior to any assignment, each assignee must execute an assumption of this Agreement in form acceptable to Licensors. No action or inaction by Licensors shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublicensee or occupant as Licensee, or a release of Licensee from the further performance by Licensee of the provisions of this Agreement. Consent by Licensors to an assignment shall not relieve Licensee from obtaining Licensors consent to any further assignment. No assignment shall release Licensee from any liability hereunder.

16.6 Unity of Assignment. Any assignment must cover Licensee's entire interest in the Private Plant and this Agreement. All of Licensee's rights under this Agreement must at all times remain in the hands of a single person or entity so that Licensors are only dealing with a single Licensee as to this Agreement and the Private Plant.

16.7 Change of Control. For purposes of this Agreement a "Change of Control" means any transaction or series of transactions, whether voluntary or involuntary, that results in any person or entity other than Licensee's direct or indirect parent entity as of the Effective Date, or a wholly owned subsidiary of such parent entity, acquiring, directly or indirectly, (a) fifty percent (50%) or more of the ownership interests in Licensee, or (b) the power to direct or cause the direction of the management and policies of Licensee. A Change of Control shall be deemed an assignment of this Agreement requiring Licensors' prior written consent under this Section. Any proposed Change of Control shall be subject to the same Qualified Operator requirements applicable to assignments under this Agreement. Licensee shall provide Licensors with written notice not less than sixty (60) days prior to the closing of any proposed Change of Control, together with such information as Licensors may reasonably request to evaluate whether the proposed transferee meets the Qualified Operator standard. Any Change of Control effected without Licensors' prior written consent shall be void and shall constitute an Event of Default under this Agreement.

16.8 Enforceability after Assignment. No consent by Licensors shall be deemed to be a novation. Licensors' consent to any assignment does not in any way expand or modify this Agreement or waive, diminish or modify any of Licensors' rights or remedies under this Agreement. This Agreement shall be enforceable against Licensee and each successor, partial or total, and regardless of the method of succession, to Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

16.9 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of this Agreement by Licensee is contemplated or bargained for. Without limitation, Licensors have the right to impose upon any consent to assignment such conditions and requirements as Licensors may deem appropriate.

16.10 Form of Assignment. Any assignment shall be by agreement in form and content acceptable to Licensors. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by and be obligated to perform the terms and conditions of this Agreement.

16.11 Consent to Assignments. Licensee shall attach to each Pre-approved Assignment a copy of Licensee's notice to Licensors of the Pre-approved Assignment and other required documents, Licensee shall attach to each other assignment, a copy of Licensors' notice to Licensee of Licensors' consent to the assignment. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

16.12 Assignment Fee. Licensee shall pay to Licensors in advance the sum of Three Thousand Five Hundred Dollars (\$3,500) as a nonrefundable fee for legal, administrative and other expenses related to every Pre-approved Assignment (other than the sale of publicly traded stock) or to any request for a consent to assignment, whether or not Licensors grants such request.

XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

17.2 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.3 Survival of Liability. All obligations of Licensee and Licensors hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement for any reason.

17.4 Severability. If any provision of this Agreement shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, then:

17.4.1 The invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement.

17.4.2 This Agreement shall be automatically reformed to secure to the parties the benefits of the unenforceable provision, to the maximum extent consistent with law.

17.5 Conflicts of Interest. No officer, representative or employee of Licensors shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

17.6 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.7 Nonliability of Officials and Employees. No official, representative or employee of Licensors shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Licensors or for any amount which may become due to any party or successor, or with respect to any obligation of Licensors or otherwise under the terms of this Agreement or related to this Agreement.

17.8 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Licensors: City Manager
 City of Scottsdale
 7447 E. Indian School Road
 Scottsdale, AZ 85251

Copy to: Wireline Telecommunications License Administrator
 City of Scottsdale
 7447 E. Indian School Rd.
 Scottsdale, AZ 85251

Copy to: City Attorney
 City of Scottsdale
 3939 N. Drinkwater Blvd.
 Scottsdale, AZ 85251

If to Licensee:
(except for invoices) Teleport Communications America, LLC
 Attn: Right of Way
 1425 Rt. 206 S
 Bedminster, New Jersey 07921

Copy to: Teleport Communications America, LLC
 Attn: Legal Department
 1425 Rt. 206 S
 Bedminster, New Jersey 07921

Invoices to: Teleport Communications America, LLC
 Attn: Lease Administration
 1425 Rt. 206 S
 Bedminster, New Jersey 07921

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.9 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence, memoranda and representation regarding the Right-of-Way.

17.10 Construction Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Licensee.

17.11 Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. If funds necessary to fulfill Licensor's obligations under this Agreement are not appropriated by the Scottsdale City Council, Licensor may terminate this Agreement, by notice to Licensee. Licensor shall use best efforts to give notice of such a termination to Licensee at least thirty (30) days prior to the end of Licensor's then current fiscal period. Termination in accordance with this provision shall not constitute a breach of this Agreement by Licensor. No person will be entitled to any compensation, damages or other remedy from Licensor if this Agreement is terminated pursuant to the terms of this subsection.

17.12 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.13 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder. Licensor shall have no

liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement. Nothing in this paragraph shall be construed to limit any rights or remedies Licensor may have under applicable law against any person or entity whose conduct, ownership, or control of Licensee gives rise to liability for Licensee's obligations under this Agreement.

17.14 Exhibits. All Exhibits specifically stated to be attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.15 Attorneys' Fees. If any action, suit or proceeding is brought by either party hereunder to enforce this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs.

17.16 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Licensor has not waived its claims procedures as respects this Agreement. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County Superior Court or a Federal district court sitting in Maricopa County. City and Lessee consent to personal jurisdiction in such courts.

17.17 Approvals and Inspections. All approvals, reviews and inspections by Licensor under this Agreement or otherwise are for Licensor's sole benefit and not for the benefit of Licensee, its contractors, engineers or other consultants or agents, or any other person.

17.18 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.19 Recording. This Agreement shall not be recorded.

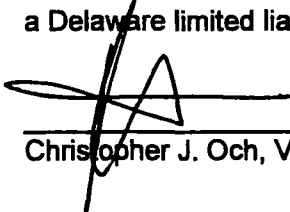
17.20 Statutory Cancellation Right. In addition to its other rights hereunder, Licensor shall have the rights specified in A.R.S. § 38-511.

17.21 Reservation of Rights. Without limitation of the foregoing, there is hereby reserved to each of Licensor and Licensee every right and privilege granted to each such party under applicable law, and each party, by the execution and delivery of this Agreement, shall not be deemed in any way to waive, relinquish, release or abrogate any such lawful rights and privileges.

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EXECUTED as of the Effective Date.

LICENSEE: TELEPORT COMMUNICATIONS AMERICA, LLC,
a Delaware limited liability company



Christopher J. Och, Vice President

State of New Jersey)
County of Somerset) ss.

The foregoing instrument was acknowledged before me this _____ day of _____,
2026 by Christopher J. Och, a / an / the Vice President
of Teleport Communications America, LLC, a Delaware limited liability company.



Notary Public

My commission expires **MICHAEL J. HICKEY**
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2208336
My Commission Expires 06/16/2028

(SEAL)

EXECUTED as of the Effective Date.

LICENSOR: **CITY OF SCOTTSDALE,**
an Arizona municipal corporation

Lisa Borowsky, Mayor

ATTEST:

Ben Lane, City Clerk

APPROVED AS TO FORM:



Luis E. Santaella, City Attorney
By: Jennifer Fernandez, Assistant City Attorney

REVIEWED BY:



Erin Perreault, Planning, Senior Director, Planning and Development Services

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	B	Map showing initial boundaries of Use Areas under this Agreement
B	3.8.3	Standards for letters of credit and forms of letter and draft
C	4.3	List of equipment allowed

EXHIBIT A

Map showing initial boundaries of Use Areas under this Agreement

Licensee to submit plans to Planning & Development Department for routes and route extensions.

EXHIBIT B

Standards for Letters of Credit

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to this Agreement, each Letter of Credit shall meet and be governed by the following additional standards and requirements:

1. **Letter of Credit Requirements.** The Letter of Credit shall be printed on Bank Safety Paper. The following terms and no others shall be stated on the face of the Letter of Credit:

1.1 The Letter of Credit is clean, unconditional, and irrevocable.

1.2 The Letter of Credit is payable to City upon presentation of the City's draft.

1.3 City may make partial draws upon the Letter of Credit.

1.4 The Letter of Credit is conditioned for payment solely upon presentation of a sight draft and a copy of the Letter of Credit.

1.5 Within ten (10) days after City's draft on the Letter of Credit is honored, City must make the original of the Letter of Credit available to the issuer in Maricopa County, Arizona upon which the issuer may endorse its payments.

1.6 The issuer specifies a telefax number, email address, and street address at which City may present drafts on the Letter of Credit.

1.7 The Letter of Credit is valid until a specified date.

1.8 The Letter of Credit will be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration the issuer notifies City in writing, by either registered or certified mail, that issuer elects not to renew the Letter of Credit for the additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available by draft on or before the then current expiration date.

1.9 The Letter of Credit is otherwise subject to the most recent edition of the Uniform Customs and Practices for Documentary Credits, published by the International Chamber of Commerce.

1.10 The Letter of Credit need not be transferable.

2. **Approved Forms.** The form of the Letter of Credit and of drafts upon the Letter of Credit shall be as follows:

2.1 Except as approved in writing by City's Chief Financial Officer or designee, the form of the Letter of Credit shall be in the form set out below.

2.2 Except as approved in writing by City's Chief Financial Officer or designee, the form of drafts upon the Letter of Credit shall be in the form set out below.

3. **Issuer Requirements.** The issuer of the Letter of Credit shall meet all of the following requirements:

3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona, at which drafts upon the Letter of Credit may be presented.

3.2 The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to City.

3.3 The issuer shall have a net worth of not less than \$1 billion.

Form of Letter of Credit

Date _____, 20__

Letter of Credit No.: _____

To: City Treasurer
City of Scottsdale
7447 E. Indian School Rd.
Suite 210
Scottsdale, Arizona 85251

From: _____

To Whom It May Concern:

We hereby establish our clean, unconditional and irrevocable Letter of Credit in your favor at the request and for the account of _____ in the aggregate amount of _____ (\$ _____), available upon presentation of your draft in the form attached hereto as **Schedule 1**.

We will honor each draft presented to us at our above office in compliance with the terms of this Letter of Credit. Partial draws are permitted. Each draft must be accompanied by a copy of this Letter of Credit. Within ten (10) days after we honor your draft, you must make the original of this Letter of Credit available to us in Maricopa County, Arizona upon which we may endorse our payment. Drafts may be presented by any of the following means:

1. By email to: _____
2. By hand or overnight courier service delivery to: _____

City of Scottsdale
7447 E. Indian School Road, Suite 215
Scottsdale, AZ 85251

This Letter of Credit is valid until _____, 20__ and shall thereafter be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then current expiration date.

This Letter of Credit is subject to the most recent edition as of the date of this Letter of Credit of the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce. This Letter of Credit is not assignable.

Bank Name: _____
Bank Officer's Signature: _____
Bank Officer's Printed Name: _____
Bank Officer's Title: _____
Bank Officer's Phone No.: _____

SCHEDULE 1

Form of Draft on Letter of Credit

Date _____, 20__

Letter of Credit No.: _____

To: _____

From: City Treasurer
City of Scottsdale
Suite 210
7447 E. Indian School Road
Scottsdale, Arizona 85251

To Whom It May Concern:

Pursuant to your Letter of Credit No. _____, the City of Scottsdale hereby demands cash payment in the amount of _____ (\$_____).

The City's preferred payment method is wire transfer. Please contact the City Treasurer's Office for wiring instructions at 480-312-2427.

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the City Treasurer of the City of Scottsdale.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at 480-312-2427 so that I can correct it. Also, please immediately notify the City Attorney at 480-312-2405.

Thank you.

City of Scottsdale, City Treasurer

EXHIBIT C

List of Equipment Allowed

1. **Permitted Equipment.** The following Licensee equipment is allowed:
 - 1.1 Horizontal signal conductors (which includes fiber optic cables).
 - 1.2 Junction boxes, splice enclosures, handholes, and manholes.
 - 1.3 Signal repeaters.
 - 1.4 Signal amplifiers.
 - 1.5 Underground conduits enclosing signal conductors.
 - 1.6 Backup batteries.
2. **Prohibited Equipment.** No other licensee equipment is allowed. Without limitation, the following are expressly prohibited:
 - 2.1 Antennas.
 - 2.2 Electrical generators.
 - 2.3 Any cabinets or other objects, other than signal lines, that are visible above ground unless the City has approved the equipment pursuant to Section 3, below.
3. **Approved Equipment.** Licensee shall not install above ground equipment ("Visible Equipment") upon the Right-of-Way unless Licensor has first approved the Visible Equipment as follows:
 - 3.1 All Visible Equipment that Licensee installs upon the use Area from time to time must be of a color included in a palette of colors designated by Licensor from time to time. Licensor shall give Licensee ninety (90) days notice of any change in the approved palette.
 - 3.2 Licensee may give Licensor notice proposing additional Visible Equipment for Licensor to approve. Any such notice shall include textual and graphical specification (such as catalog pages) of the Visible Equipment Licensee proposes. Licensor shall respond within thirty (30) days of any such notice. Licensor shall give Licensee ninety (90) days notice before removing any approved Visible Equipment from the list of approved Visible Equipment.
 - 3.3 No visible Equipment shall be deemed approved by Licensor until Licensor stamps the information "APPROVED ONLY FOR PURPOSES OF EXHIBIT "C" OF THE WIRED TELECOMMUNICATIONS RIGHT-OF-WAY LICENSE AGREEMENT," and Licensor's project manager initials and dates the stamp. The stamp used to Stamp plans shall contain such words as Licensor may choose from time to time.