

**TELECOMMUNICATIONS SERVICES LICENSE AGREEMENT BETWEEN**  
**MCImetro Access Transmission Services Corp. AND CITY OF APACHE JUNCTION**

THIS LICENSE AGREEMENT ("License" or "Agreement") is made this 7th day of July, 20 20 by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("Licensor" or "City"), and MCImetro Access Transmission Services Corp., ("Licensee" or "Company"), collectively the "Parties" and individually as a "Party".

**RECITALS**

A. Licensor owns public streets and alley rights-of-way ("ROW") within the corporate limits of the City of Apache Junction (the "Boundaries") that are designated for use by utility providers for installation, operation and repair of public utilities pursuant to licenses or other agreements with Licensor.

B. Licensee desires to install and operate telecommunication fiber optic lines and related support equipment (the "Communications Plant" or the "Plant") under and in a portion of the ROW subject to the requirements of this Agreement.

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

D. Licensor and Licensee also desire to provide a method whereby additional portions of the ROW can be added to this Agreement (the "New Use Areas"). Licensee may expand the Communications Plant within the City's ROW by obtaining a permit from Licensor and upon Licensor's approval of plans. Licensor may grant, with conditions, or deny such approval in its sole discretion. Any expansion of the Communications Plant approved by Licensor shall be subject to all terms and conditions of this License and the conditions, if any, imposed by Licensor.

E. Pursuant to the Telecommunications Law, Licensee has obtained from the Arizona Corporation Commission the privilege to provide telecommunications services within Arizona, through a certificate of convenience and necessity ("CC&N") Decision No. 59983 dated January 16, 1997 (the "Certificate").

F. There may be portion of the ROW (the "Third Party Areas") upon which the Communications 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 ROW dedications or that have regulatory use restrictions imposed by a Third Party.

G. The Licensor retains the right to adopt, from time-to-time, in addition to

the provisions contained in this Agreement, such ordinances and rules and regulations as may be deemed necessary by the Licensor to protect and promote the property, health, safety and welfare of the Licensor's inhabitants.

H. Licensee agrees to provide and maintain accurate maps showing the location of all facilities owned or used by Licensee on City ROW and shall comply with reasonable mapping requirements as City may establish from time to time.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing Recitals, 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 follow:

**SECTION 1. Definitions.** For the purpose of this License, unless the context otherwise requires, the following terms, phrases, words, and their derivatives have these meanings. When not inconsistent with the context, words in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. If there is a conflict between these definitions and those listed in Apache Junction City Code the definitions in the code prevail and control.

"A.C.C.": Arizona Corporation Commission.

"ADEQ": Arizona Department of Environmental Quality.

"A.J.C.C.": Apache Junction City Code.

"A.R.S.": Arizona Revised Statutes, as amended from time to time.

"Cable Services" and "Cable System": as defined in A.J.C.C., Vol. I, Chapter 14: Cable Television.

"City Council": the governing body of the City of Apache Junction composed of seven elected officials.

"Claim(s)": includes losses, claims, damages, suits, actions, payments, judgments, demands, reasonable expenses and costs, including, but not limited to, reasonable attorney fees incurred at different levels of litigation, through all appeals.

"Commercial Mobile Radio Services": two-way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 United States Code § 157.

**"Conduit":** a pipe made of metal, ceramic or plastic that is designed to protect buried cables.

**"Contractor":** any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that performs services or provides goods relating to this Agreement. Contractor shall include any subcontractor hired and/or used by Licensee for the performance of services or provisions of goods relating to this Agreement.

**"Dark Fiber":** means fiber optic strands that are not connected to transmission equipment.

**"Environmental Laws":** all federal, state, and local, ordinances, rules, regulations, statutes and judicial decisions in effect at the inception of this Agreement or subsequently in effect, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or prevention or cleanup of pollution or contamination of the air, soil, surface water or ground water, or any other applicable thing or things within the scope of all such laws, ordinances, rules, regulation, statutes, and judicial decisions.

**"Facilities":** the fiber optic plant, equipment and property used in the provision of Telecommunications Services and not owned by City, including but not limited to: poles, wires, pipe, conduits, pedestals, antenna and other appurtenances placed on, in, or under the ROW.

**"FCC":** the Federal Communications Commission.

**"Fiber Optic Communication System":** an interstate and intrastate network of fiber optic cables and all related property including conduit, carrier pipe, cable fibers, repeaters, power sources and other attachments and appurtenances necessary for transmitting high speed voice, video and data in connection with a local and long distance telecommunications system or systems, excepting one-way transmissions directly to customers, users or subscribers of video programming or other programming services or subscriber interaction, if any, which is required for the selection of or response to video programming or other programming services.

**"Fiber Optic Network":** a communication system consisting of an optical transmitter to convert an electrical signal into an optic signal to send into the optical fiber, a cable containing bundles of multiple optical fibers that is routed through underground conduits and buildings, multiple kinds of amplifiers, and an optical receiver to recover the signal as an electric signal.

**"Hazardous Substances":** those materials defined as toxic or pollutants, or wastes by Environmental Laws, including but not limited to the following

substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials.

**"Interstate Telecommunications Services":** Telecommunications Services provided between users in Arizona and users outside of Arizona.

**"License":** this non-exclusive authorization granted by City to Licensee to construct, operate, maintain, reconstruct, repair and remove the Facilities.

**"Other programming services":** information that a cable television system operator makes available to all subscribers generally.

**"Pre-existing Environmental Condition":** the presence, emission, disposal, discharge or release of any Hazardous Substance at, in, on, under or about the Facilities, however caused, existing prior to the placement of Facilities within ROW whether the nature and extent of such contamination is known or unknown at the execution of this Agreement.

**"Proprietary Information":** trade secrets which were established by a telecommunications provider relating to business functions.

**"Provider":** a Telecommunications Corporation that constructs, installs, operates or maintains telecommunications facilities or interstate telecommunications services in the ROW.

**"ROW" and "rights-of-way":** any land which by deed, conveyance, agreement, easement, dedication, usage, zoning condition, process of law or other means is reserved for or otherwise dedicated to the general public for street, highway, alley, public utility, pedestrian walkway and other public purpose.

**"Telecommunications":** the transmissions between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received, excepting wireless or cable services provided by a cable system.

**"Telecommunications Corporation":** any public service corporation which provides Telecommunications Services in the State of Arizona under authority granted by the A.C.C.

**"Telecommunications Services":** the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

**"Telecommunications Laws":** local, state and/or federal government



authority which allows Licensor to regulate its streets, alleys and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of Telecommunications Services on a competitively neutral basis to include, without limitation, the following: 1) A.R.S. §§ 9-581 through 9-583; 2) Constitution of the State of Arizona; 3) other applicable federal, state and local laws, rules and regulations; and 4) Licensor's city codes, police powers, its authority over public rights-of-way, and its other governmental powers and authority.

**"Users":** any unrelated (unaffiliated) third parties of Licensee that are leasing Licensee's Facilities.

**"Video programming":** programming provided by or generally considered comparable to programming provided by a television broadcast station.

**SECTION 2. Permission to Use ROW.** Licensor hereby grants to Licensee a nonexclusive revocable license to use the Use Areas as follows:

**2.1 Use Areas Defined.** The initial Use Areas are those portions of the ROW that Licensor authorizes Licensee to occupy with Licensee's Communications Plant shown on a map as part of Licensee's application for ROW use and more fully explained in § 2.3 below with a continuing map disclosure requirement as required under § 2.8.13. The Use Areas are limited to the public street and all ROWs, and any federally patented easements granted to Licensee by Licensor for Licensee's encroachment on land whose fee simple title is vested in Licensor. The Use Areas may decrease, increase, and otherwise change over time due to abandonments, dedications, annexations, extinguishments, and other events that affect the amount of Licensee's Communications Plant on land included in Licensor's ROW network inventory. This Agreement shall not allow Licensee to use ROW that is abandoned, condemned, or is removed from the Use Areas, or is otherwise no longer part of Licensor's easement network.

**2.2 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 Communications Plant shall be confined to the Use Areas.

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

**2.3.1** When Licensee desires to add New Use Areas to the Use Areas, Licensee shall give notice to Licensor's City Engineer containing the following:

**2.3.1.1** An up-to-date map showing the initial Use Area with highlights showing the area proposed New Use Areas as required under § 2.8.13.

2.3.1.2 Within sixty (60) calendar days after receiving such a notice, Licensor shall inform Licensee whether Licensor approves the proposed New Use Areas.

2.3.2 Upon addition of New Use Areas, the New Use Areas shall be subject to all provisions of this Agreement.

2.3.3 Licensor's city manager or designee shall have administrative authority without further action by Licensor's city council to consent to the addition of New Use Areas.

2.4 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 Licensor from time to time. Licensee shall not violate the Site Documents.

2.5 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.

2.6 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.

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

2.8 Reserved Right and Competing Users and Activities. Notwithstanding anything in this Agreement to the contrary, Licensor 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, as follows:

2.8.1 Competing Users. Water/wastewater/storm pipes, pavement, fiber, telephony, electric lines, cable and other facilities may all be located within the same segment of ROW within portions of the Communications Plant. Licensee accepts the risk that Licensor 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 ROW unavailable for Licensee's use. The Competing Users include without

limitation Licensor, the State of Arizona and its political subdivisions Pinal or Maricopa County, special districts, community facilities districts, the public, federal agencies, and all manner of utility companies and other existing or future users of the Use Areas or New Use Areas.

**2.8.2 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 ROW or existing or proposed uses of adjoining or nearby land:

**2.8.2.1** All manner of streets, alleys, signs, sidewalks, trails, ways, traffic control devices, tunnels, and all manner of other transportation facilities and their appurtenances.

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

**2.8.2.3** 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.

**2.8.2.4** All other uses of the ROW that Licensor may permit from time to time.

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

**2.8.4 Licensor's Cumulative Rights.** All of Licensor's Reserved Rights under various provisions of this Agreement shall be cumulative to each other.

**2.8.5 Use Priorities.** This Agreement does not grant to Licensee or establish for Licensee any exclusive rights, pre-existing 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. Licensee shall not obstruct, impede, disrupt or interfere with or prevent any Competing User from using the Use Areas.

**2.8.6 Regulation.** Licensors shall have full authority to: a) regulate use of the Use Areas; b) to resolve competing demands and preferences regarding use of the Use Areas on a non-discriminatory basis; and c) to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, Licensors may take any or all of the following into account in regulating use of the Use Areas:

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

**2.8.6.2** All other factors Licensors may consider relevant, whether or not mentioned in this Agreement.

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

**2.8.7 Communications Plant Relocation.** Upon Licensors' request, Licensee shall temporarily or permanently relocate or otherwise modify (the "Relocation Work") the Communications Plant as follows:

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

**2.8.7.2** Licensors may perform any part of the Relocation Work that has not been performed within ninety (90) calendar days after notice from Licensors. Licensee shall reimburse Licensors for its actual reasonable costs (including administration) in performing any Relocation Work.

**2.8.7.3** Licensors has no obligation to move Licensee's, Licensors' or Competing User's facilities.

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

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

**2.8.7.6** 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.

**2.8.8 Disruption by Competing Users.** Neither Licensor nor any agent, contractor or employee of Licensor shall be liable to Licensee, its customers or third parties for any service disruption or for any other harm caused them or the Communications Plant due to Competing Users or Competing Activities, or Licensee's failure to relocate lines after being requested to do so by Licensor.

**2.8.9 Damage.** Licensee shall be liable for any damage to or disturbance of Licensor controlled property and/or Licensee property located in the ROW caused by Licensee's failure to act in a timely manner. All public and Licensee property damaged or disturbed by Licensee's activities shall be promptly repaired, replaced, and/or restored by Licensee at Licensee's sole expense to as good a condition as before such damage or disturbance and to the Licensor's reasonable satisfaction. Licensee shall not install, maintain or use any of the Communications Plant in such a manner as to damage or interfere with another Competing User located within the ROW of the Licensor. In accordance with A.R.S. § 40-360.21 *et seq.*, Licensee shall appropriately notify Arizona Blue Stake (800-782-5348) before beginning construction.

**2.8.10 Emergency Disruption by Licensor.** Licensor may remove, alter, tear out, relocate or damage portions of the Communications 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 or employee of Licensor shall be liable to Licensee or its customers or third parties for any harm so caused to them or the Communications 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 Communications Plant. In any event, Licensor shall inform Licensee after such actions. Licensee's work to repair or restore the Communications Plant shall be Relocation Work.

**2.8.11 Public Safety Hazard.** If the Communications 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 ROW or perform utility services, 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 to the Use Areas within two (2) hours of any request by Licensor under this section.

**2.8.12 Dark Fiber Lease:** The Parties acknowledge that any lessee



or licensee of Licensee's Facilities shall be required to enter into an agreement with the Licensor in such form as shall be acceptable to the Licensor.

**2.8.13 Mapping:** Licensee shall maintain as-built drawings of its facilities located within the ROW and furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current Licensor electronic mapping format as specified by the Licensor) and in hard copy form on an annual basis or upon reasonable request by the Licensor. Licensee shall create and maintain maps of any of its Conduit System and/or Fiber Optic Network routes, Use Areas, New Use Areas, and any above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the Licensor. Licensee will also provide surface-location marking of any of Licensee's Facilities that are located underground within any public ROW within ten (10) business days of installation. The information provided by Licensee under this section will be accurate to the best of Licensee's knowledge. Licensee shall make every reasonable effort to provide accurate and useful information. Licensee shall be permitted to remove any information from the drawings provided hereunder that is not required for Licensor's purposes or is otherwise confidential to Licensee.

**2.8.13.1** If complete updates are not provided in a compatible format, Licensee shall pay the actual, reasonable costs Licensor incurs to update the Licensor's electronic mapping format due to the location or relocation of Licensee's Facilities.

**2.8.13.2** In the event Licensee fails to supply records in Licensor specified format and there is a cost to Licensor in converting Licensee provided files, Licensee will be responsible for the conversion costs and will pay such costs within thirty (30) calendar days of the date of the bill from Licensor invoicing the amount due.

**2.8.13.3** The files and drawings provided by Licensee to Licensor shall be considered confidential and subject to the restrictions in Section 15 below and disclosed as a public record only to the extent required by A.R.S. § 39-121, *et seq.*

**SECTION 3. Term of Agreement.** The term of this Agreement is as follows:

**3.1 Initial Term.** The initial term of this Agreement shall be from July 7, 2020 through July 6, 2025, unless sooner terminated as set forth in this Agreement.

**3.2 Extensions.** The initial term of this Agreement may be extended for two (2) additional five (5) year periods (hereinafter "Extension Periods") subject to the following:

**3.2.1** No Extension Period shall be effective without the written



consent of both Licensor and Licensee through a written agreement approved by Licensor's mayor and city council at an appropriately agendaized public meeting.

3.2.2 Both Licensor and Licensee may withhold their consent to an Extension Period in their sole and absolute discretion.

3.2.3 Both Licensor and Licensee shall indicate whether they consent to an Extension Period by giving notice of consent to the other at least ninety (90) calendar days before the end of the initial term (or, in the case of the second or subsequent Extension Period, the prior Extension Period).

3.2.4 Any Extension Periods may include an increase in the annual fee and any other applicable fees set forth in this license.

3.3 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 Extension Period of this Agreement from month to month that may be terminated at any time by Licensor upon sixty (60) calendar days notice to Licensee, or by Licensee upon sixty (60) calendar days notice to Licensor. In no event however, shall such hold over period be longer than one hundred eighty (180) calendar days.

**SECTION 4. Licensee's Payments.** Licensee shall make payments to Licensor as follows:

4.1 By entering into this Agreement, neither party waives any current or future rights reserved under the Telecommunications Act of 1996, including but not limited to, those rights set forth in Sections 253(C), reserving Licensor's right to manage the public ROW and to require fair, non-discriminatory and reasonable compensation from Licensee for use of the public ROW.

4.2 Licensee shall be solely responsible for payments to Licensor as follow:

4.2.1 Application Fee. Licensee shall pay Licensor an application fee of Three Thousand Dollars (\$3,000.00) for the administrative costs involved in the issuance of a telecommunications license which shall be due at the time of the submittal of the application.

4.2.2 Transaction Privilege Tax. Licensee will owe transaction privilege tax on any qualifying services under Apache Junction City Tax Code, Chapter 8A.

4.2.3 Row Usage Fee for Provision of Interstate Telecommunication Services. A Fiber Optic Network in the ROW that carries interstate traffic between and among Licensee's interstate points of presence exclusive of the Fiber Optic Network used by the local network and the portion of the interstate

network that carries intrastate calls, is subject to an annual fee based on the number of linear feet of trench in the ROW. The annual fee is \$1.89 per linear foot which shall be adjusted annually as provided in Section 4.2.3.1.

4.2.3.1 Commencing on the anniversary date of this Agreement and continuing through the fifth year of the term, the linear foot fee shall be escalated annually each July 1st based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for All Items ("CPI").

4.2.3.2 If and when there are portions of Licensee's routes that provide Interstate Telecommunication Services in which no Apache Junction customers are served, Licensee will notify the Licenser within thirty (30) calendar days of the location and footage of such route(s) and pay a pro-rated linear foot fee that is due for the length of such route(s) at the dollar rate noted in § 4.2.3. At the next anniversary date of the Agreement, the yearly fee for such additional footage will be added to the current annual fee.

4.2.3.3 Upon each anniversary of this Agreement, any fee owed will be adjusted as provided by Sections 4.2.3.1 above, and payment made by as required by Section 4.3.

4.2.4 Compensation for Use of ROW. Licensee agrees to pay an annual fee for the portion of the ROW used by Licensee for solely for Dark Fiber or Conduit leasing to third-party Users, empty conduit occupation of the ROW, and any other uses other than those conforming: (a) to the definition of Telecommunication Services as defined in A.R.S. § 9-581; or (b) internet access. Unless a different calculation for fair and reasonable compensation is agreed to by the Licenser, the fee will be calculated at the same linear foot rate as in Section 4.2.3 above. Upon each anniversary of this Agreement, any monetary fee will be adjusted as provided by Section 4.2.3.1 above, and payment made by as required by Section 4.3.

4.2.4.1 Should Licensee lease any of its Dark Fiber or Conduits to a third-party User, Licensee shall notify the Licenser within thirty (30) calendar days of the location and footage of such leased Dark Fiber or Conduit route(s) and pay a pro-rated linear foot fee that is due for the length of such route(s).

4.3 For any annual payment(s) owed, Licensee shall make such payment(s) to Licenser within thirty (30) business days of the effective date of this Agreement and by the anniversary of such effective date thereof for the duration of the term or extension term.

4.4 Arrearage. As of the date of this Agreement, Licenser agrees that Licensee has paid all amounts due and no further amounts are owed.

**4.5 Permit Fees.** Licensee shall pay all applicable construction permit fees to place Facilities in the ROW, which includes charges for encroachment permit applications, issuance, inspection, testing, plan review and any other fees adopted by Licensor and applicable to persons doing work and/or encroaching in Licensor's ROW pursuant to Apache Junction City Code, Vol. I, Article 13-3.

**4.6 Damage Fees.** Licensee shall pay any reasonable costs associated with any damage caused to the ROW or public property.

**4.7 Pro-rated Fees.** Within thirty (30) calendar days after the issuance of a permit for the installation of additional footage of Conduit, if such installation subjects Licensee to an annual fee pursuant to section 4.2.3 or 4.2.4 above (if applicable), Licensee will pay a pro-rated portion of the annual fee, as adjusted, per linear foot for that section of its expanded route. The pro-rated annual fee shall be determined by multiplying the annual footage fee, as adjusted, for the year of payment, by a fraction, the numerator of which is the number of full months between the month installation and the next following anniversary date of this Agreement and the denominator of which is twelve (12).

**4.7.1** In the event, Licensee cancels or returns a permit and does not construct or install Facilities which has been approved by such a permit, the footage fees previously paid for ROW or public property used or occupied by Licensee shall be applied as a credit toward any annual fee or refunded to Licensee by Licensor.

**4.8** Any checks should reference the contract number and be sent to:

City of Apache Junction  
City Engineer  
300 E. Superstition Blvd.  
Apache Junction, AZ 85119

**4.9 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 of the greater of one percent (1%) of the amount due. Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1.5%) 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.

**4.10 Fee Payment Amount Report.** Each installment of Fee Payment by the Licensee, 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 Payments.

**4.11 Security Fund/Letter of Credit.** Within ten (10) calendar days before the date this Agreement is scheduled for consideration by the city council, Licensee shall provide Licensors a letter of credit as follows:

4.11.1 The amount of the letter of credit shall be Fifty Thousand Dollars (\$50,000).

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

4.11.3 The letter of credit shall meet the requirements listed on Exhibit "A" attached hereto and may be drawn upon as per the same exhibit.

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

4.11.4.1 Licensee shall cause the original letter of credit to be delivered to Licensors city engineer and a copy to the city attorney.

4.11.4.2 Licensee shall pay all costs associated with the letter of credit, regardless of the reason or manner such fees are required.

4.11.4.3 Within fourteen (14) calendar days after Licensors gives Licensee notice that Licensors has drawn on the letter of credit, Licensee shall cause the letter of credit to be replenished to its prior amount.

4.11.5 Licensors 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:

4.11.5.1 Licensee fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this agreement.

4.11.5.2 Licensee fails to make monetary payments required under this Agreement.

4.11.5.3 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.

4.11.6 Licensors shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

**4.12 In-Kind Payment as an Offset to Fees Owed.** This Agreement does not currently provide for any future in-kind payments by Licensee, however, should fees be owed under this section, the Parties may agree in writing to an in-kind payment of fiber(s), conduit(s), or other facilities or services provided by Licensee to offset such fees or transaction privilege taxes owed through an addendum to this Agreement.

**4.13 Taxes.** Licensee shall pay any applicable city, county and state transaction privilege and use tax. Such taxes are in addition to any non-tax amounts owed by Licensee pursuant to this section. Licensee consents to the disclosure of any and all information reported on Licensee's transaction privilege tax returns by authorizing and allowing the City's tax collector to release such information to the city manager or designee.

**4.14 Performance Bond.**

**4.14.1** Prior to receiving any permit to construct, install, maintain or perform any work on public property that requires a permit from Licensor pursuant to applicable city codes, Licensee shall cause to be filed and maintain under either completion of the construction or termination of this Agreement as determined by Licensee, a faithful performance bond in favor of Licensor in the sum of One Hundred Thousand Dollars (\$100,000.00) or the amount of the construction costs (whichever is greater) to guarantee that Licensee shall observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate Licensor for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Licensee, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. Licensor and Licensee agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same security fund and/or letter of credit noted above in § 4.11.

**4.14.2** If Licensee has completed the above construction and wants the bond released, Licensor will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

**4.15 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 Apache Junction 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.

**SECTION 5. 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"):

**5.1 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:

**5.1.1** Constructing, maintaining, removing, repairing and operating the Communications Plant as described in this Agreement.

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

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

**5.2.1** Licensee may use a User Contract to either "sell" or "lease" fibers or conduit in the Communications Plant or otherwise grant permission to the third party to use fibers or conduit in the Communications Plant. However, 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.

**5.2.2** Should Licensee lease, sell or otherwise grant permission to a third party to use fiber or conduit within the ROW, Licensee shall inform the Licensor within forty-five (45) calendar days of the location and length of the fiber or conduit route that is being leased, sold or otherwise granted permission to a third party through an indefeasible right of use agreement or similar contractual arrangement.

**5.3 Regulated Activities.** The following additional requirements apply to certain uses (the "Regulated Activities") of the Communication Plant:

**5.3.1** The following are Regulated Activities:

**5.3.1.1** Use of the Communications Plant for cable television as defined by applicable federal, state or local law or regulation.

**5.3.1.2** Use of the Communications Plant for open video service as defined by applicable federal, state or local law or regulation.

**5.3.2** Licensee shall not use the Communications Plant for the above



noted Regulated Activities without proper formal authorization from Licensor, separate from this Agreement.

**5.3.3** Licensee may enter into User Contracts that allow third parties to use the Communications Plant for the Regulated Activities only if the third party has already entered into an agreement with Licensor that allows the third party to conduct the Regulated Activity in the Use Areas.

**5.3.4** If Licensee ever obtains or seeks federal, state or local approval to provide Non-Telecommunications Regulated Activities over the Communications 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.

**5.3.5** Without limiting the other amendment or waiver provisions of this Agreement, no change to or waiver of this Agreement's provisions regarding Non-Telecommunications 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.

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

**5.4.1 Signs Required.** Licensee shall install (subject to Licensor's review and approval) and thereafter maintain all signs and markings that the Communications 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.

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

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

**5.6 Noise.** Except during approved construction and only as allowed under A.J.C.C. § 10-1-12 (C), noise at the Use Areas is subject to the following limitations:

**5.6.1** Except for vehicle backup alarms and other safety devices, outdoor or amplified loud speakers, sirens or other devices for making noise are strictly prohibited.

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

**5.7 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):

**5.7.1 State of Arizona**

**5.7.2 Maricopa and Pinal Counties**

**5.7.3 Bureau of Reclamation**

**5.7.4 Central Arizona Water Conservation District**

**5.7.5 Salt River Project**

**5.7.6 Water Utilities Community Facility District (Apache Junction)**

**5.7.7 Superstition Mountains Community Facility District**

**5.8 Licensee's Agent.** Licensee shall at all times retain on call (24 hours a day 365 days a year) available to Licensor by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Communications Plant and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and the calendar day-to-calendar day operation of the ROW 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 numbers of a person to handle Licensee's affairs and emergencies at the ROW. Any change shall be given in writing in the manner stated for notices under this Agreement.

**5.9 Coordination Meetings.** Licensee shall meet with Licensor and other ROW users from time to time as requested by Licensor to coordinate and plan construction on the ROW and all matters affected by this Agreement.

**5.10 Toxic Substances.** Licensee's activities upon or about the ROW shall be subject to the following regarding any 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"):

5.10.1 Licensee shall not produce, dispose, transport, treat, use or store any Toxic Substances in, upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

5.10.1.1 Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the ROW. 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").

5.10.1.2 Electric backup batteries.

5.10.2 Licensee shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by Licensor.

5.10.3 Licensee shall not use the ROW in a manner inconsistent with regulations issued by ADEQ, or in a manner that would require a permit or approval from any other governmental agency. The preceding sentence does not prohibit standard permits for control of dust during construction permitted by this Agreement.

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

5.10.4.1 Participate in the Hazardous Substances coming to the ROW.

5.10.4.2 Fail to immediately report the Hazardous Substances to Licensor.

5.10.4.3 Participate in spreading or otherwise disturbing the Hazardous Substances.

5.10.4.4 Exacerbate the effects of the Hazardous Substances or the difficulty or cost of dealing with the Hazardous Substances.

5.10.5 Licensee understands the dangers presented to persons, property and the environment by dealing with Hazardous Substances. Licensee acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Hazardous Substances containing materials.

5.10.6 Within six (6) hours after any violation by Licensee of this Agreement pertaining to Hazardous Substances, Licensee shall give Licensor notice reporting such violation.

5.11 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 Communications Plant to eliminate such interference. Any such corrective measures shall be made at no cost to Licensor.

5.12 Access by Others. Licensee shall cause to comply with this Agreement all persons physically accessing the ROW through or under Licensee or this Agreement. Licensee is responsible for any violations of this Agreement by persons physically accessing the ROW through or under Licensee or this Agreement.

SECTION 6. Improvements by Licensor. Licensor has not promised, and is not obligated in any manner, to make any improvements or perform any other construction or other work in the ROW.

SECTION 7. Licensee's Improvements Generally. All of Licensee's improvements and other construction work whether or not specifically described herein upon the ROW (collectively "Licensee's Improvements") shall comply with the following:

7.1 Construction Plans. Annually, and as per § 2.8.13, and upon reasonable request with at least thirty (30) calendar days prior written notice by the city manager or designee, Licensee shall deliver to Licensor route maps showing plans for existing and proposed construction of the Communications Plant in the Use Areas or New Use Areas along ROWs within the City.

7.2 Permits and Inspections. Prior to performing work upon the ROW, 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.

**7.3 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 Communications Plant.

**7.4 Regulatory Approval Process.** The building permit processes, ROW 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.

**7.5 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.

**7.6 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 Apache Junction Engineering Standards (A.J.C.C., Vol II, Chapter 10), as either may be amended from time to time. All construction by Licensee must comply with applicable noise, light, timing, event planning, dust and other ordinances and policies in effect from time to time.

**7.7 Improvement Quality.** Any and all work performed on the ROW 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 engineering and public infrastructure codes and similar rules.

**7.8 Damage During Work.** Upon performing any work upon the ROW, Licensee shall simultaneously restore the ROW to its prior condition, as directed by Licensor and repair any holes, mounting surfaces or other damage whatsoever to the ROW. Such work shall include revegetation and appropriate irrigation systems for revegetated areas as directed by the City's Park and Recreation and



Development Services Department Directors or their designees.

**7.9 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.

**7.9.1** Licensee shall repair or replace in accordance with Licensor's standards, rules and policies published from time to time, all pavement, sidewalks, curbs, landscaping and other Licensor improvements of any description that may be damaged in the course of Licensee's activities under this Agreement.

**7.10 Coordination with Dry Utility Permit Process.** 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 ROW. 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.

**7.11 Disturbance of Hazardous Substances.** Prior to undertaking any construction or other significant work, Licensee shall cause the Use Areas to be visually inspected for any signs of potential asbestos or other Hazardous Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Hazardous Substances, Licensee shall cause the contractor or other person performing such work to give to Licensor notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials. Licensee shall cause any storage, inspection, treatment, transportation, disposal, handling, or other work involving Hazardous Substances by Licensee upon the ROW to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Licensee shall promptly deliver to Licensor copies of all reports or other information regarding Hazardous Substances. Licensee shall not use any Hazardous Substances in its pipes, conduit or Communications Plant and if it does so, it shall be subject to the same indemnification, hold harmless and defense obligations as noted in Section 13.6 for any and all claims against the city and its elected officials, officers, appointees, employees and agents.

**7.12 Work Classifications.** All Licensee Improvements and other



construction, repair, maintenance and other work (collectively "Work") shall be divided into three categories ("Heavy Work", "Medium Work" and "Light Work"):

**7.12.1 Heavy Work** is any work that involves any of the following:

**7.12.1.1 Complete blockage** of a sidewalk or trail.

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

**7.12.1.3 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.

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

**7.12.1.5 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.

**7.12.1.6 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.

**7.12.2 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 ROW 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.

**7.12.3 Light work** is Work that is not Medium Work or Heavy Work.

**7.13 Street Classifications.** All ROW shall be divided into three categories ("Critical Streets", "Large Streets", and "Small Streets") as follows:

**7.13.1 Critical Streets** are the following: Meridian Drive (Southern Avenue to Baseline Avenue), Ironwood Drive (South of Southern Avenue) and Idaho Road (South of U.S. Highway 60 (*aka* "Superstition Freeway")). Critical Streets are only the streets named in this paragraph and do not include other streets encircled by or near the Critical Streets.

**7.13.2 Large Streets** are all streets shown on Appendix A, Figure 16, Recommended Lanes/Street Classifications, 2019 Apache Junction Active Transportation Plan as "2 lanes-Arterial Collector", "4 lanes plus turn lanes", and

**“Multi-Lane Blvd.” General Plan as Major Arterials, Minor Arterials or Collectors.**

**7.13.3 Small Streets** are all Route ROW that is not Critical Streets or Large Streets.

**7.14 Light Work Restrictions.** All Light Work shall comply with the following:

**7.14.1 Licensee** shall obtain all permits.

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

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

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

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

**7.16 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:

**7.16.1 Heavy Work** is prohibited on Critical Streets during the period from January 2<sup>nd</sup> to April 15<sup>th</sup> during any year this Agreement is in effect.

**7.16.2 Licensee** shall follow the existing construction and traffic control permitting processes for Heavy Work.

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

**7.17 Work Restriction Waivers.** Licensor’s contract administrator shall have authority, but not as an obligation, to grant written exceptions to the provisions of this Agreement that limit the calendar days during which Licensee may conduct Work.

**7.18 Licensee** shall also conduct all construction activity in any of the three categories pursuant to A.J.C.C., Vol. I, § 10-1-12, Noise.

**SECTION 8. Licensee’s Initial Project Construction.** Licensee is not required to construct any portion of the Communications Plant by any particular deadline.

**SECTION 9. Maintenance and Operations.** Except as expressly provided below, Licensee shall be solely responsible for all maintenance, repair and utilities for the Communications Plant the term of this Agreement. Without limitation, Licensee shall perform the following:

**9.1 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 Engineering Design Standards, or other applicable 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.

**9.2 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. 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.

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

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

**9.5 Maintenance by Licensee.** Licensee shall at all times repair and maintain the Communications 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 Phoenix Metropolitan area as determined in Licensor's discretion.

**SECTION 10. 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 to Licensee by this Agreement to do the same. Licensee's failure to do so shall be a material breach by Licensee of this Agreement.

**10.1 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:

**10.1.1** If Licensee shall be in arrears in the payment of Fee Payment due and not paid and shall not cure such arrearage within thirty (30) calendar

days after Licensor has notified Licensee of such arrearage.

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

10.1.3 If Licensee shall fail to maintain any insurance required by this Agreement or the letter of credit current at its full value of Fifty Thousand Dollars (\$50,000.00).

10.1.4 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").

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

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

10.1.5.2 The date thirty (30) calendar days after Licensor gives Licensee notice of such noncompliance.

10.1.6 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) calendar days after Licensor notifies Licensee that such request has not been honored.

10.1.7 If Licensee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW and shall not cure such failure within sixty (60) calendar days.

10.1.8 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:

10.1.8.1 Another failure to comply with any provision of this Agreement during the following thirty (30) calendar day period.

10.1.8.2 Three (3) or more failures to comply with any provision of this Agreement during any thirty (30) calendar day period.

10.1.8.3 Six (6) or more failures to comply with any provision of this Agreement during any six (6) month period.

10.1.9 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 thirty (30) calendar days after Licensor has notified Licensee in writing of such failure or neglect.

10.2 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:

10.2.1 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.

10.2.2 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.

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

10.2.4 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, 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.

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

10.2.6 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.

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

10.2.8 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.

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

**10.3.1** 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 ROW use by Licensor, Competing Users, the surrounding property occupants and the general public when Licensee fails to comply with the Violation Fee Provisions.

**10.3.2** 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 in the event of delay or non-performance. 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.

**10.3.3** 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 Licensor'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.

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

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

**10.3.5.1** The amount of Five Hundred Dollars (\$500.00) per calendar day for Licensee's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) calendar days after Licensee's receipt of Licensor's written notice to correct such defects is sent, except where such curative efforts by Licensee is precluded by a force majeure event. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the ROW or correct the violation.

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



10.3.5.3 The amount of Four Thousand Dollars (\$4,000) for any unauthorized partial or total assignment of this Agreement.

10.3.5.4 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 ten (10) calendar days of Licensee's receipt of written notice from Licensor.

10.3.5.5 The amount of Fifty Dollars (\$50.00) per day for failure to provide certificates of insurance.

**10.3.6 Violation Fee Payments shall be assessed as follows:**

10.3.6.1 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.

10.3.6.2 Licensee shall pay the Violation Fee Payment within ten (10) calendar days after Licensor's notice is sent.

**10.4 Effect of Abandonment.** In addition to Licensor's other rights, if Licensee abandons the Communications Plant during the term of this Agreement, or fails to operate the Communications Plant in accordance with its duty to provide continuous service, Licensor, at its option, may acquire ownership of the Communications Plant; operate the Communications Plant; designate another entity or a consultant to operate the Communications Plant temporarily until Licensee restores service under conditions acceptable to Licensor or until the license is revoked and a new Licensee selected by Licensor is providing service; or obtain an injunction at Licensee's cost for attorney fees and court costs requiring Licensee to continue operations. If Licensor operates or designates another entity to operate the Communications Plant, Licensee shall reimburse Licensor or its designee for all attorney fees, court costs and reasonable costs and damages incurred that are in excess of the revenues from the Communications Plant. Licensor shall give Licensee seven (7) calendar days written notice before operating or designating another entity or consultant to operate the Communications Plant. If Licensee abandons only part of the Communications Plant, then this paragraph shall apply to the part abandoned. A part of the Communications Plant shall be deemed to be abandoned if Licensee fails to respond in the affirmative within sixty (60) calendar days of Licensee's receipt of a written notice from Licensor requesting that Licensee confirm that Licensee is maintaining the part of the Communications Plant and that it is available for use by Licensee's customers.

**10.5 Non-waiver.** Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensor to demand any

performance required of Licensee under this Agreement, and no acceptance by Licensor of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Licensor'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 Licensor of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Licensor 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 stop 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 Licensor unless made in writing by a duly authorized representative of Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. Licensee expressly disclaims 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.

**10.6 Reimbursement of Licensor's Expenses.** Licensee shall pay to Licensor within thirty (30) calendar days after Licensor's 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 one and one-half percent (1.5%) per month from the date expended or incurred by Licensor.

**10.7 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.

**10.8 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) calendar days after notice by Licensee to Licensor that the amount has become

payable or that the performance is due.

**10.9 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.

**SECTION 11. 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):

**11.1 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.

**11.2 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.

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

**11.4 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 ROW. This notice shall also certify Licensee's letter of credit and insurance are current, up-to-date with all required amendments set forth in this Agreement.

**11.5 Removal of Improvements.** Notwithstanding anything in this paragraph or the remainder of this Agreement to the contrary, if requested by Licensor, Licensee may leave the cable, conduits, other appurtenances, and the remainder of the entire Communications 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. Licensee shall remove all of the Communications 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 ROW that is not removed during that period shall automatically vest in Licensor. Licensor shall give Licensee Ninety (90) calendar days notice before requiring removal of the Communications Plant.

**SECTION 12. Indemnity and Insurance.** Licensee shall procure and maintain for the duration of this agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Licensee, or its employees in the amounts and types set forth below. Failure to do so, may, at the sole determination of Licensor, be declared a material breach of this Agreement and may result in termination.

**12.1 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:

**12.1.1 Commercial General Liability.** Commercial General Liability insurance with limits of Five Million Dollars (\$5,000,000.00) each occurrence for bodily injury and property damage and, Ten Million Dollars (\$10,000,000.00) general aggregate. Coverage shall be written on Insurance Service Office ("ISO") occurrence form or a substitute form providing equivalent coverage and shall cover liability arising from premises-operations, independent contractors, products-completed operations, personal injury and advertising injury and contractual liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. City, its mayor and council, employees, appointees, and officials shall be included as additional insured parties under Licensee's Commercial General Liability insurance policy with respect to the work performed under this agreement using ISO Additional Insured Endorsements or substitute endorsements providing equivalent coverage. The policy shall contain a waiver of transfer of rights of recovery (subrogation) against City, its mayor and council, employees, officials, appointees and agents. Limits for the commercial general liability, commercial, automobile liability and employer's liability required herein may be attained by a combination of primary and excess/umbrella liability insurance.

**12.1.2 Automobile Liability.** Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of Five Million Dollars (\$5,000,000.00) per accident relating to any ROW work. Coverage shall be written on ISO form or a substitute form providing equivalent liability coverage. Such insurance shall

cover hazards of motor vehicle use for loading and offloading.

**12.1.3 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.

**12.2 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.

**12.3 Professional Liability Insurance.** Professional Liability insurance with limits Five Million Dollars (\$5,000,000.00) per claim and aggregate covering the negligent actions of Licensee in the performance of professional services under this agreement under this agreement.

**12.4 Form of All Insurance.** The insurance policies shall be primary insurance as respects City. Any insurance, self-insurance, or insurance pool coverage maintained by City shall be in excess of Licensee's insurance and shall not contribute with it:

**12.4.1** Upon receipt of notice from its insurer(s) Licensee's shall use commercially reasonable efforts to provide City with thirty (30) calendar days' prior written notice of cancellation.

**12.4.2** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII, and legally authorized to do business in the State of Arizona.

**12.4.3** Policies must also cover and insure Licensee's activities relating to the business operations and activities conducted away from the ROW Verification of Coverage. Licensee shall furnish City with certificate of insurance and blanket additional insured endorsements evidencing the insurance requirements of Licensee before commencement of the work.

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

**12.4.5** Licensee's maintenance of insurance as required by this agreement shall not be construed to limit the liability of Licensee to the coverage provided by such insurance, or otherwise limit Licensor's recourse to any remedy to which Licensor is otherwise entitled at law or in equity.



12.4.6 All policies outlined in 12.1.1, 12.1.2 and 12.1.3, 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").

12.4.7 All of Licensee's Contractors shall maintain coverage in the same manner as stated herein for Licensee, subject to reduction in the sole discretion of the city manager or his or her designee based on potential exposures and risks of the work being performed by the Contractor. Licensee shall furnish subcontractors' certificates of insurance to the Licensor promptly upon request.

12.4.8 Licensor reserves the right to periodically review and increase the insurance limits to ensure coverage based on the market and risk requirements throughout the term.

12.4.9 All required policies outlined in 12.1.1 and 12.1.2 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.

12.4.10 All policies must require the insurer to endeavor to provide Licensor with at least thirty (30) calendar days prior notice of any cancellation.

12.4.11 All required policies shall require that notices be given to Licensor in the manner specified for notices to Licensor under this Agreement.

12.5 Insurance Certificates. Licensee shall evidence all required insurance by furnishing to Licensor certificates of insurance and endorsements 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 reasonably acceptable to Licensor. Licensee shall provide updated certificates and endorsements at Licensor's request.

12.6 Indemnity. In addition to all other indemnities and other obligations hereunder, 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 pay, protect, indemnify, defend and hold harmless Licensors its elected officials, employees, officers, appointees and agents, contractors, agents and all other Additional Insureds for, from and against:

- a) any and all claims or harm related to labor, materials, professional services and other work for Licensee's Improvements and any interest, penalties and other expenses which may be imposed, and from any lien thereof or sale or other proceedings to enforce payment thereof;
- b) any disturbance in Hazardous Substances in the course of the contractor's or other person's work;
- c) any loss or liability incurred by reason of any Hazardous Substance on or affecting the ROW Use Areas attributable to or caused by Licensee or anyone using the ROW under this Agreement;
- d) Licensee's use of the ROW; and e) the rights granted to Licensee with respect to the ROW or Licensee's exercise of its rights under this Agreement (the "Indemnity").
- e) all costs, damages, expenses incurred by Licensors, its officers, employees, appointees and agents in the defense of any litigation brought by third parties challenging the right of Licensors to enter into this Agreement with Licensee under Licensors' or other applicable law.

Except as otherwise limited by this Agreement, 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 ROW 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 ROW or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Licensee or any other additional insured or anyone for whose mistakes, errors, omissions or negligence Licensee or Licensors may be liable.

As a condition to Licensors' 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.

Notwithstanding the foregoing, the Indemnity does not apply to claims arising from the gross negligence or intentionally wrongful acts of Licensor and claims that the law prohibits from being imposed upon the indemnitor.

The provisions of this paragraph shall survive termination of this Agreement.

This indemnification applies even if the party seeking damages makes a claim against Licensor or brings a claim against Licensor based on vicarious liability or non-delegable duty or any other legal theory or theories.

Licensee shall pay, indemnify, defend and hold harmless Licensor and the ROW 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 thereof or sale or other proceedings to enforce payment thereof.

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

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

12.7 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the ROW 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.

12.8 Insurance to be Provided by Others. Licensee shall cause its contractors or other persons occupying, working on or about, or using the ROW 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

**SECTION 13. 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:

13.1 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.

**13.2 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.

**13.3 Licensee's Facilities.** In the event any of the Use Areas are condemned through an Eminent Domain action by Licensor, Licensee shall be compensated on a fair market value basis the value of Licensee's Facilities by Licensor.

**SECTION 14. Damage to Use Areas.** In the event of damage to or destruction of the Communications Plant by fire, explosion, the elements, the public enemy, or other casualty, Licensee shall commence restoring the casualty damage within thirty (30) calendar days. Licensee shall complete the restoration work within sixty (60) calendar days after commencing the restoration work. Licensee's restoration work shall be subject to the plans 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 calendar day of each month a written report of the progress of the restoration work.

**SECTION 15. Licensee's Records.** During the entire term of this Agreement, Licensee shall keep records and provide information to Licensor as follows:

**15.1 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"):

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

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

**15.2 Records Inspection.** Licensee shall:

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

**15.2.2** Make the records of Covered Information (and reasonable accommodations for Licensor's audit and inspection) available to Licensor at Licensee's offices in Arizona or at Licensor's location.

15.2.3 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.

15.2.4 Notwithstanding any provision in this Agreement, Licensee acknowledges and understands that Licensor is a municipal corporation of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Act (A.R.S. §§ 39-121, *et seq.*).

15.2.5 Upon request from Licensor, but no more than annually, Licensee shall provide License information relating to this License and Agreement and/or to Licensor's or Licensee's rights or obligations under this License and/or Agreement. Licensee shall make available to Licensor the requested reports or records in the formats in which they are customarily prepared by Licensee. Licensee reserves the right to seek appropriate confidentiality protections for any information to be produced to Licensor. Licensor shall have the right to inspect all books, records, maps, plans, and other like material which relate to License at any time during normal business hours. Such records shall be made available to Licensor by Licensee via electronic delivery. Licensee shall also require its employees, agents, and accountants to give their cooperation and assistance in connection with Licensor's electronic access to such records.

15.3 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 at City Hall, 300 E. Superstition Blvd, Apache Junction, Pinal County, Arizona for a period ending seven (7) years after the time period reported by the records.

15.4 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.

15.5 Reports. Upon not less than ten (10) calendar 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.

15.6 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.



**SECTION 16. 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:

**16.1 Future Municipal Legislation.** Licensors has not contracted away any of its legislative authority by this Agreement.

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

**16.2.1** Licensee acknowledges that this Agreement does not constitute, and Licensors 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 Apache Junction or any other governmental body upon or affecting Licensee, the ROW or Licensee's use of the ROW.

**16.2.2** 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.

**16.2.3** Licensors by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over the ROW or any other property related to this Agreement or within the ROW.

**16.2.4** Licensors'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 Apache Junction or any other governmental body.

**16.3 Building and other Permits.** Licensee shall obtain at its own expense all building or other permits, if required, in connection with all construction performed by Licensee, shall comply with all zoning, building safety, fire, public infrastructure, sidewalk, 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.

**16.4 Dry Utility Permit.** This Agreement is incorporated by reference into any "dry utility permit" obtained by the Licensee to the extent of allowing the Communications Plant to exist on the ROW 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 ROW, Licensee shall obtain the following additional encroachment permits, as

applicable:

16.4.1 Permission to work in the ROW.

16.4.2 Permission to alter Licensors improvements.

16.4.3 Permission to obstruct traffic.

16.4.4 Any other applicable permits regarding work in the ROW.

**16.5 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 ROW, 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 ROW and improvements and other Licensor or Licensee property thereon.

**16.6 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.

**16.7 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.

**16.8 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 Communications 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, ROW permits and the like.

**SECTION 17. Assignability & Transferability.** Licensees shall not assign, sell or transfer its interest in this License without the Licensor's written consent. Notwithstanding the foregoing Licensee, may assign its interest in this License to an affiliated entity that is owned by Licensee or that is owned by the same entity as Licensee without consent of the Licensor; however, Licensee must notify the Licensor of such assignment within ninety (90) days of such assignment. Both Licensee and its transferee or assignee shall however be liable to Licensor for

any breach of this Agreement, jointly and severally.

**SECTION 18. Miscellaneous.** The following additional provisions apply to this Agreement:

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

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

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

**18.4 Severability.** Licensor and Licensee each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Licensor to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

**18.5 Invalidity or Unenforceability.** The invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement.

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

**18.7 Conflicts of Interest.** No officer, representative or employee of Licensee shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law. In addition, the provisions of A.R.S. § 38-511 apply to this Agreement.

**18.8 Nonliability of Officials and Employees.** No official, representative or employee of Licensor 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 Licensor or for any amount which may become due to any party or successor, or with respect to any obligation of Licensor or otherwise under the terms of this Agreement or related to this Agreement.

**18.9 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 Licensor:** City Manager Bryant Powell  
City of Apache Junction  
300 E. Superstition Blvd.  
Apache Junction, AZ 85119

**And Copies to:** City Engineer Emile Schmid  
City of Apache Junction  
300 E. Superstition Blvd.  
Apache Junction, AZ 85119

City Attorney Richard J. Stern  
City of Apache Junction  
300 E. Superstition Blvd.  
Apache Junction, AZ 85119

**If to Licensee:** Verizon - Franchises and Right-of-Way  
Attn: Franchise Manager  
600 Hidden Ridge Dr., HQE02E102  
Irving, TX 75038

**With a Copy to:** Verizon Legal Department  
Attn: Network Legal Team  
1300 I Street, NW 5th floor  
Washington, DC 20005

By notice from time to time, a person may designate any other street address be deemed to be complete seven (7) calendar days (excluding Friday, Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

**18.10 No Partnership.** This License is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, agreement, or relationship, partnership, or formal or informal business organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth. Licensee agrees that no persons engaged by Licensee are City employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. Licensee shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation, unemployment

compensation, other benefits, and all related taxes and premiums concerning such persons, and shall save and hold Licensor harmless with respect thereto.

**18.11 Entire Agreement.** This License, and the exhibits listed below that are either attached and/or on file at City and available for inspection, are incorporated by this reference, and constitute the entire agreement between Licensor and Licensee with respect to this License and supersede all prior negotiations, communications, discussions and correspondence, whether written or oral, concerning this License. No supplement, modification, waiver or amendment of any term of this License shall be binding or effective unless executed in writing by the Parties. No waiver of any provision of this License shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

**18.12 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.

**18.13 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 any Licensor obligations to make payments to Licensee under this Agreement are not appropriated by the Apache Junction city council, and Licensee does not postpone its right to such payment until funds are appropriated, 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) calendar 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.

**18.14 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.

**18.15 No Third Party Beneficiaries.** Unless otherwise stated in this Agreement, 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.

**18.16 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.

**18.17 Attorney 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 (as determined by the court (and not a jury) in such proceeding).

**18.18 Choice of Law.** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or for removal to federal court. It is the intent of the Parties hereto that no attorney fees or court costs shall be awarded in any suit arising from or related to this Agreement, and that the sole remedy shall be an order by the court for specific performance, excluding any and all money damages.

**18.19 Force Majeure.** Licensor and Licensee each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Licensor to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

**18.20 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.

**18.21 Recording.** This Agreement shall not be recorded.

**18.22 Compliance with Federal and State Laws.** Licensee understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement. As required by A.R.S. § 41-4401, Licensee and its subcontractors, assignees and permittees hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Licensee and its subcontractors, assignees and permittees further warrant that after hiring an employee, they will verify the employment eligibility of the employee through the E-Verify program. If Licensee uses any subcontractors in performance of services, subcontractors shall be required to comply with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), including verifying the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Licensee is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation, or greater if statutorily permitted. Licensor at its option may terminate this Agreement after the third violation. Licensee shall not be deemed in material breach of this Agreement if Licensee and/or its subcontractors, assignees or permittees establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Licensor retains the legal right to inspect the papers of any Licensee, its subcontractor or assignee or permittee employee who works under this Agreement to ensure that they are complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law

**18.23 Prohibition to Contract with Parties who engage in a Boycott of the State of Israel.** The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from entering into an Agreement with any Party who engage in boycotts of the State of Israel. Should Licensee or its subcontractors, assignees or permittees under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated as if this Agreement expired with no remaining term or option to extend. Additionally, any such boycott is a material breach of contract and will subject Licensee and its subcontractors, assignees and permittees to monetary damages, including but not limited to, consequential damages.

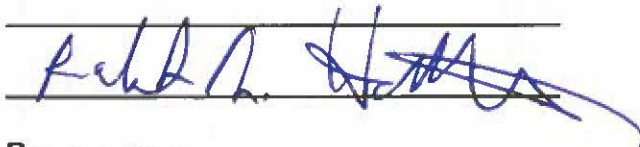
**18.24 Permits & Fees.** Unless otherwise provided in this Agreement, Licensee shall secure and pay for all applicable permits, government fees,

licenses and inspections necessary for the proper execution and completion of services which are customarily secured after execution of the Agreement. Licensee shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the obligations. Licensee represents and warrants that any license necessary to perform the services under this Agreement is current and valid. Licensee understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Licensee agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement. Licensee also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by all applicable laws. If there are taxable activities, a business license shall be converted to a transaction privilege tax license by the Licensee through the City of Apache Junction City Clerk's Office. Further, Licensee agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

**18.25 Preferred Installation Locations.** Licensee agrees to use its best efforts and will work in good faith with Licensors to accommodate Licensors' requests for fiber optic placements in strategic ROW locations Licensors identify as being the most beneficial areas that will likely enhance the economic feasibility and practicality for future commercial and industrial businesses that have development interest in the city limits.

**LICENSEE:**

MCImetro Access Transmission Services Corp.



By: Robert J. Hayes

(printed name)

Its: Senior Manager - Network Engineering & Operations

(title)

**LICENSOR:**

**CITY OF APACHE JUNCTION, ARIZONA,**  
an Arizona municipal corporation



By: Emile Schmid

Its: City Engineer

APPROVED AS TO FORM:

 7.15.20  
\_\_\_\_\_  
R. Joel Stern, City Attorney



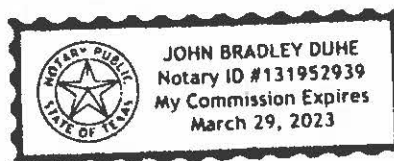
STATE OF TEXAS )  
 ) ss.  
COUNTY OF DALLAS )

The foregoing was subscribed and sworn to before me this 7<sup>th</sup>  
day of July, 2020, by Robert J. Hayes as SP. MGR. NETWORKS of MC Metro  
Access Transmission Services Corp, a/an Delaware corporation/limited liability company.

  
Notary Public


My Commission Expires:

3/29/2023



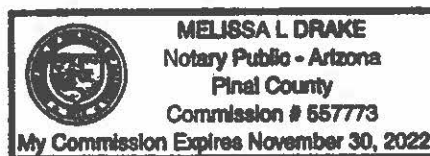
STATE OF ARIZONA )  
 ) ss.  
COUNTY OF PINAL )

The foregoing was subscribed and sworn to before me this 20<sup>th</sup>  
day of July, 2020, by Emile Schmid, as City Engineer of the City of  
Apache Junction, Arizona, an Arizona municipal corporation.

  
Notary Public

My Commission Expires:

11.30.2022





## **EXHIBIT A**

### **LETTER OF CREDIT STANDARDS**

- A) The Letter of Credit shall be issued by a commercial bank acceptable to the Licensor at a local branch inside the City of Apache Junction corporate limits. The bank must meet the following minimum requirements:**
- i) Chartered under the laws of the United States, any state thereof or the District of Columbia and which is insured by the Federal Deposit Insurance Corporation.**
  - ii) Licensed lender in the State of Arizona.**
  - iii) Long-term, unsecured and unsubordinated debt obligations are rated in the highest categories by either Moody's Investors Service, Inc. (Moody's) or Standard & Poor's Ratings Service (S&P) or their respective successors, which shall mean:**  
  
**Moody's:   Aaa, Aa1, Aa2, Aa3, A1 or A2**  
**S&P:       AAA, AA+, AA, AA-, A+ or A**
- B) If at any time the Letter of Credit Issuer requirements are not met, or if the financial condition of such issuer changes in any materially adverse way, as determined by Licensor in its sole discretion, then a replacement Letter of Credit which meets the requirements must be provided to Licensor within five (5) calendar days of receiving written notice from Licensor.**
- C) Original Letter of Credit must be delivered to city engineer with a copy to the city attorney.**
- D) Licensee shall pay all costs associated with the Letter of Credit.**
- E) Within fourteen (14) calendar 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.**
- F) 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:**
- i) Licensee fails to cause the Letter of Credit to be renewed, extended, increased in amount or otherwise maintained as required by this agreement.**
  - ii) Licensee fails to make monetary payments required under this Agreement.**

- iii) 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 Letter of Credit.
- G) Licensor shall also have such additional rights regarding the Letter of Credit as may be provided elsewhere in this Agreement.
- H) Letter of Credit Format:
  - i) The Beneficiary must be the City of Apache Junction.
  - ii) The Amount must be fifty thousand dollars (\$50,000).
  - iii) The Principal must be the Licensee who is a signatory to the License Agreement.
  - iv) The local bank name & address upon which payment would be drawn must be clearly stated on the face of the document.
  - v) The text identifying the License agreement must be detailed and reflect the specific agreement number.
  - vi) The expiration date will be a minimum of two years. The Expiration Date must automatically extend for one year without amendment.
  - vii) The presentation of draft requirement will be drawn on a local branch in the city limits.
  - viii) The text must contain a partial draft clause that clearly indicates partial draft draws are permissible.