

ORIGINAL



TOWN OF PARADISE VALLEY  
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Attorney for Town of Paradise Valley

**BEFORE THE ARIZONA CORPORATION COMMISSION**

Commissioners:

Kristen K. Mayes, Chairman  
Paul Newman  
Gary Pierce  
Sandra D. Kennedy  
Bob Stump

Docket No. T-20567A-07-0662

**TOWN OF PARADISE VALLEY,  
ARIZONA'S RESPONSE TO DATA  
REQUESTS FROM STAFF**

IN THE MATTER OF THE APPLICATION  
OF NEWPATH NETWORKS, LLC, FOR  
APPROVAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO  
PROVIDE TRANSPORT AND  
BACKHAUL TELECOMMUNICATIONS  
SERVICES

Hearing Date: \_\_\_\_\_

The Town of Paradise Valley, an Arizona Municipal Corporation ("the City") hereby responds to Staff's First Set of Data Requests as follows:

STF 1.1 Newpath filed its Application for a Certificate of Convenience and Necessity ("CC&N") on November 26, 2007. Please explain why the City/Town did not intervene until April 2009.

**ANSWER:** At a meeting on approximately February 25, 2008, between the Paradise Valley Mayor, one Council Member, Town Manager, Town Attorney, Newpath Network representatives and AT&T representatives, a representative of Newpath indicated that once Newpath obtained a CC&N from the ACC and was designated as a utility, the Town would not be able to prohibit Newpath from erecting nodes/antennas in the Town's rights-of-way. The Town representatives responded that they did not agree with that assessment, primarily based on the Town's existing Codes and the holding in the APS v. Town of Paradise Valley case (cited in the Town's Motion to Intervene). It is believed that Newpath representatives responded that they would forward to the Town the most recent transcript from the February 18, 2009 hearing. The Town did not receive that transcript from Newpath (it

later received a copy from the Scottsdale Attorney's Office). The Town's next notification regarding the ACC CC&N issue was a contact from the City of Scottsdale Attorney's Office indicating that Scottsdale was considering intervening and that the Town should consider doing such as well. Additionally, at that approximate time a Newpath representative contacted the Town to advise it of the April 10, 2009 deadline to file as an intervener. Given that Newpath had indicated that the issuance of a CC&N would grant it the utility authorization needed to erect nodes/antennas in the Paradise Valley rights-of-way and no clarification as to how such claims were related to the Town's existing Codes, the Town believed it would be prudent to intervene and by so doing make sure that its authority to regulate its rights-of-way was protected, and, at a minimum, that the issuance of a CC&N be conditioned and clarified by the Arizona Corporation Commission such that the CC&N contain no provisions inimical to the Town's interests. To the extent that this data request seeks further information than that noted above, the Town objects to this "data request" because it does not request "data" but rather requests that the Town provide written testimony regarding an issue which is not before this Commission. The Town further objects in that the requested response may require the Town to reveal information which is the subject of attorney-client privilege and/or work-product privilege.

STF 1.2 Staff's report was filed on October 31, 2008. Please explain why the City/Town did not intervene at that time?

**ANSWER: See answer to STF 1.1.**

STF 1.3 Please provide (1) the date of the first discussion between Newpath and your City/Town, (2) the date of the first discussion between your City/Town and homeowners/residents regarding DAS, (3) the date of the first joint discussion involving Newpath, your City/Town and homeowners/residents, (4) the total number of joint discussions involving Newpath, your City/Town and homeowners/residents, to date, and (5) with reference to (1), (2), (3) and (4) above, please describe the nature of any discussions that occurred.

**ANSWER:**

**(1) 1<sup>st</sup> Meeting December 11, 2007 – 3:00 p.m. Meeting with Stephen Garcia, Deputy Town Attorney Steven Zraick, Town Engineer Bill Mead. Since that time there have been several more meetings between Town staff members, the Town Attorney, and Newpath representatives, but no Council meetings, no Council Work Study Sessions and no meetings with the Council as a whole.**

**(2) There have been no public meetings to date and no meetings with Town residents of which the Town is aware.**

**(3) There have been no joint public meetings to date.**

(4) There have been no joint public meetings to date.

(5) Meeting on December 11, 2007 discussed NewPath installing a distributed antenna system linked to a fiber optic network within the Town using Town rights-of-way as the vehicle for such installation.

STF 1.4 Please provide your City/Town's understanding of Newpath's Distributed Antenna System ("DAS") and how it operates.

**ANSWER:** The Town's understanding is pretty much the same as that described in the Memorandum filed by the City of Scottsdale, that is, NewPath offers distributed antenna systems to customers who are primarily wireless telephone carriers such as AT&T. These services involve the transmission and receipt of radiofrequency signals that would typically be considered commercial mobile service under federal law. After receiving these signals, they are fed into an underground network of fiber optic conduits which are then linked to "hubs" and connected to the existing phone lines or sent up onto satellites and transmitted to end users from there.

STF 1.5 Is it your City/Town's understanding that DAS would be interconnected with the Public Switched Telephone Network ("PSTN")?

**ANSWER:** The Town objects to this "data request" because it does not request "data" but rather requests that the Town provide written testimony. Without waiving said objection, the Town has no firm understanding of how the DAS system is connected to the existing phone network, other than representations based on information submitted to the Town by Newpath representatives that the DAS nodes all connect to "hubs."

STF 1.6 Why does City/Town believe it is possible for Newpath to provide DAS services in your City/Town without a CC&N from the Arizona Commission?

**ANSWER:** The Town objects to this "data request" because it does not request "data" but rather requests that the Town provide written testimony. Without waiving said objection, the Town is not aware of any law which prohibits the Town from doing so if the licensee does not have a CC&N from the Commission.

STF 1.7 If Newpath provides a telecommunications service, would City/Town agree a CC&N is needed?

**ANSWER:** The Town objects to this "data request" because it does not request "data" but rather requests that the Town provide written testimony. The Town further objects because "telecommunications service" is not defined in this request. The Town cannot accurately respond to this request unless telecommunications service is sufficiently defined.

STF 1.8 Please identify the City/Town's rules, ordinances or laws that apply to DAS services and explain how the City/Town's rules, ordinances or laws would operate with respect to DAS services.

**ANSWER: The Town of Paradise Valley ("Town") has no specific rules, ordinances or laws with reference to "DAS services." The Town does define "Antenna" in Article XII of the Town Code as "the surface from which wireless radio signals are sent from and received by a personal wireless service facility." To the extent NewPath claims to be a utility, Article XI requires a Special Use Permit for "new utility lines."**

STF 1.9 With reference to footnote 7 of City of Scottsdale's 4/24/09 filing, please provide:

- a. The names of each wireless communications facility owner/provider currently operating in the City/Town's rights of ways; - **None.**
- b. The name of each such provider having a CC&N that the City/Town is aware of; - **None.**
- c. The date when each such provider was authorized by the City/Town for entry into the City/Town's rights of ways; and - **Never**
- d. Please list the providers City/Town has entered into agreements with allowing for conduit or optical fiber in City/Town's rights of way and the nature of the services being provided with such facilities. - **AGL, Cox, Qwest. (See Agreements attached).**

STF 1.10 Has Newpath received your City/Town's approval and/or met your City/Town's conditions for making use of the City/Town's rights of way?

**ANSWER: No, they are not permitted by current Town Code to install antenna nodes in Town ROW, nor is any other entity.**

- a. If yes, please explain the terms and conditions that would be applicable to Newpath's offerings.
- b. If no, please explain any processes that Newpath still needs to undergo to gain approval.

**ANSWER: If NewPath were to explore placing antenna nodes on private property, then it could pursue obtaining Conditional Use Permits pursuant to Article XII of the Town of Paradise Valley Zoning Code. To do such, NewPath would need to apply for a Conditional Use Permit and submit a master site plan, landscape plan, photographs, diagrams, photo-simulations, sight line representation, siting elevations, design submittals, market and service maps, lease agreement, radiofrequency radiation performance submittal, noise performance submittal, and environmental submittal.**

- c. Would the terms and conditions in point 1, above, be different if Newpath

is certificated by the Arizona Commission? – **Objection.** It is not clear from the structure of this question what “point 1” is.

STF 1.11 What is the City/Town’s charge per node for the DAS services Newpath proposes to provide if Newpath receives a CC&N? Please provide the supporting City/Town rules, ordinances or laws.

**ANSWER: No charge set as antenna nodes are not currently permitted. If permitted, this would be subject to negotiation.**

STF 1.12 What is the City/Town’s charge (per node or otherwise) for the services Newpath proposes to provide if Newpath does not receive a CC&N? Please provide the supporting City/Town rules, ordinances or laws.

**ANSWER: No charge set as antenna nodes are not currently permitted. If permitted in the future, this would be subject to negotiation.**

STF 1.13 If the City/Town’s charges (per node or some other basis) for the services Newpath proposes to provide are higher without a CC&N than with a CC&N, how does the City/Town justify the difference in accordance with federal law and applicable FCC orders on rates for access to rights of way?

**ANSWER: No charge set as antenna nodes are not currently permitted. If permitted, then subject to negotiation.**

STF 1.14 Are there other charges, other than the node charge, that Newpath would be required to pay to the City/Town for rights of way access for placement of its fiber that interconnects with the nodes? If yes, please describe all such charges and identify any instance where the charge varies depending upon whether or not the carrier has a CC&N.

**ANSWER: Undetermined at this time as the Town has not discussed this, nor does it have such fees specified in its current fee schedules.**

STF 1.15 If the City/Town’s charges for access to rights-of way for placement of fiber are higher without a CC&N than with a CC&N, how does the City/Town justify the difference in accordance with federal law and applicable FCC orders on rates for access to rights of way?

**ANSWER: See STF 1.14.**

STF 1.16 How much annual revenue would the City/Town realize if Newpath were allowed to provide service without a CC&N?

**ANSWER: Undetermined at this time. See STF 1.14**

STF 1.17 How much annual revenue would the City/Town realize if Newpath were to provide service with a CC&N?

**ANSWER: Undetermined at this time. See STF 1.14**

STF 1.18 Please provide your City/Town's interpretation or definition of the term 'node' used in the 4/24/09 Scottsdale filing, footnote 3, page 3.

**ANSWER: Objection. Calls for legal conclusion and calls for speculation.**

STF 1.19 Please provide the City/Town/s definition of a private line service which is regulated by the Commission. Many telecommunications providers are certificated to provide private line services. Does the City/Town agree that a provider with a CC&N for the provision of private line services may employ to provide its services a DAS network? If no, please thoroughly explain the City/Town's position.

**ANSWER: Objection. Vague, and calls for legal conclusions. The Town does not have its own definition for a "private line service."**

STF 1.20 Is it the City/Town's position that every certificated Competitive Local Exchange Carrier ("CLEC") must provide end-user dial tone in order to be regulated by the Commission? If yes, please explain in detail why the City/Town believes this restriction is required. Is the City/Town aware that the Commission certificates some CLECs as private line providers only?

**ANSWER: Objection. Vague, and calls for legal conclusions. The Town reserves the right to supplement this STF.**

STF 1.21 Is City/Town aware of DAS providers that employ DAS as part of a private line offering in other States or within Arizona who are not certificated? If yes, please provide:

- a. The names of the providers;
- b. The names of the States in which the providers are not certificated; and
- c. The names of the jurisdictions in which DAS services are being provided.

**ANSWER: Unknown at this time. However, see the Agreement between NewPath and the City of Glendale (attached) which may involve a private line service.**

STF 1.22 Does the City/Town believe that the concern for the aesthetics of DAS networks is solely within the jurisdiction of the City/Town? If yes, has the City/Town taken any steps to address the concerns of its residences who have objected to the placement of the DAS network? If no, please explain which other jurisdictions have authority and provide the applicable rules, ordinances or laws.

**ANSWER: Yes and No. The Town has jurisdiction to regulate DAS networks, primarily through its Zoning Ordinance. See Town Zoning**

**Ordinance and answers to previous STFs. The concerns of Town residents have not been addressed as no public meetings with Town residents has occurred to date and are thus unknown at this time.**

STF 1.23 Does the City/Town believe that approval for attachment of DAS antennas on street light poles, stop light poles, etc (as requested by Newpath) is solely within the jurisdiction of the City/Town? If no, please explain which other jurisdictions have authority and provide the applicable rules, ordinances or laws.

**ANSWER: See answer to STF 1.22 above.**

STF 1.24 Does the City/Town believe that approval for the placement of DAS network node equipment in City/Town rights of way is solely within the jurisdiction of the City/Town? If no, please explain which other jurisdictions have authority and provide the applicable rules, ordinances or laws.

**ANSWER: See answer to STF 1.22 above.**

**RESPECTFULLY SUBMITTED** this 17<sup>th</sup> day of August, 2009.

**TOWN OF PARADISE VALLEY**

By: \_\_\_\_\_

  
Andrew M. Miller  
6401 E. Lincoln Drive  
Paradise Valley, AZ 85253  
(480) 348-3691  
Town Attorney

**ORIGINAL** and 13 copies of the foregoing  
filed with the Arizona Corporation Commission  
this 17<sup>th</sup> day of August, 2009

**COPY** of the foregoing mailed this  
17<sup>th</sup> day of ~~July~~, 2009, to:

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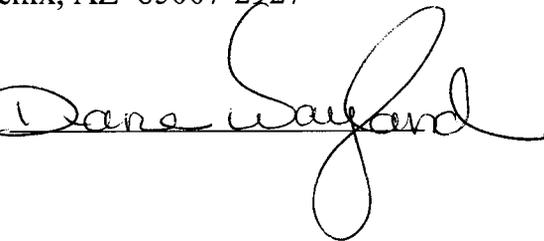
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By:



*License Agreement*

Between the Town

of

*Paradise Valley, Arizona*

And

*AGL Networks, LLC*

August 13<sup>th</sup>, 2007

## LICENSE AGREEMENT TOWN OF PARADISE VALLEY

THIS LICENSE AGREEMENT (hereinafter alternatively called "AGREEMENT," "LICENSE," or "LICENSE AGREEMENT"), issued by the TOWN OF PARADISE VALLEY (hereinafter called "TOWN"), an Arizona municipal corporation, to AGL Networks, LLC (hereinafter called "GRANTEE"), a Delaware limited liability company.

WHEREAS, Grantee has applied to the Town for permission to construct, install, operate, maintain and use certain public rights-of-way in the Town as identified in this License, in order to provide a Communication System comprised of conduit, innerduct, and dark fiber optical cable infrastructure; and

WHEREAS, Grantee is not providing transmission or lit services over its facilities and is not providing Telecommunications Services pursuant to Arizona Revised Statutes §§ 9-581 through 9-583, and, as a result, assures the Town it does not have to obtain a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("ACC"); and

WHEREAS, if Grantee intends to utilize its facilities to provide local exchange and intralata/interlata, or lit services, Grantee shall be required to obtain a CC&N from the ACC and provide evidence thereof to the Town; and

WHEREAS, by such authority as may be conferred by state law, including but not limited to Arizona Revised Statutes §§ 9-581 through 9-583, and the Town Code, the Town is issuing this License; and

WHEREAS, the Town Council has authorized the Town Manager or his designee to execute this License with Grantee to acquire, construct, install, operate, maintain and use Communications System facilities in, along, under, over and across certain public rights-of-way within the Town at the locations identified herein, as appropriate;

NOW, THEREFORE, the Town hereby grants to Grantee the License, pursuant to the terms herein.

### ARTICLE I DEFINITIONS

1. Definitions. The following terms, as used in this Agreement, have the following meanings, with all terms defined in this Article I in the singular to have the correlative meaning when used in the plural and vice versa:
  - a) "**Affiliated Person**" means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Grantee; (ii) each Person in which the Grantee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, joint venture or joint venture partner of the Grantee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control with the Grantee; provided that "Affiliated

Person" shall in no event mean the Town or any creditor of the Grantee solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management or common Control with, the Grantee. "Control" or "Controlling Interest" means 25% or more of the outstanding voting equity interests of a party.

- b) "**Agreement**" means the Agreement to which this section is attached, together with all appendices, amendments, or modifications attached thereto.
- c) "**Communications Service**" or "**Service**" means "telecommunications service" or "information service" as defined in 47 U.S.C. § 153 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.
- d) "**Communications System**" means conduit, innerduct, dark fiber optical cable infrastructure and such other system, plant, equipment or property which Grantee locates within the Streets over which Services may be provided and that may be rented, leased, IRU'd or otherwise licensed to other Persons.
- e) "**Drop**" means the facility that connects the individual subscriber(s) residence or commercial building to the nearest node site or feeder cable of the Communications System.
- f) "**Effective Date**" means the date this Agreement is adopted by the Town Council of the Town of Paradise Valley, Arizona.
- g) "**Equipment**" means the poles, wires, optical fibers, cables, electrical conductors, conduits, subways, manholes, fixtures, appliances and appurtenances which Grantee locates in the Streets and uses to provide Services or rents, leases, IRUs or licenses to other Persons pursuant to this License Agreement.
- h) "**FCC**" means the Federal Communications Commission.
- i) "**Grantee**" means **AGL Networks, LLC**, a Delaware limited liability company authorized to do business in Arizona.
- j) "**IRU**" means an Indefeasible Right of Use granted by Grantee to a third person to use the Equipment or Communications System.
- k) "**License**" has the meaning set forth in Article II, Section 1 of this Agreement.
- l) "**License Fee**" has the meaning set forth in Article III, Section 1 of this Agreement.

- m) "**Person**" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a governmental or political subdivision or an agency or instrumentality thereof, but shall not mean the Town.
- n) "**Streets**" means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parkways, waterways, public grounds and public places or waters within the Town (as expanded through annexation from time-to-time as provided for under Article II, Section 2 hereunder) and belonging to the Town.
- o) "**Term**" has the meaning set forth in Article II, Section 3 of this Agreement.
- p) "**Town**" means the Town of Paradise Valley, Arizona.

**ARTICLE II  
GRANT OF AUTHORITY**

1. Grant of License. The Town grants the Grantee a license to occupy and use those Streets identified on the Attachment "A" map (the "Initial License Area"), which is incorporated herein by reference, to install, operate, upgrade, repair and remove Equipment (i) as part of a Communications System in which Services are provided and (ii) to rent, lease, IRU or otherwise license the use of the Equipment to other Persons, in either case, subject to the conditions of this Agreement ("License").
2. License Territory. This License granted by the Town to the Grantee will cover the territory embraced by the Town limits as they now exist or as they may hereafter be extended, but which shall be initially limited to Initial License Area, which may be mutually amended in writing by the Parties during the Term of this Agreement. In the event the Town limits or the Initial License Area are extended, this License Agreement will be amended to reflect such change in the License Area and such amended License Agreement will take the place of and supersede all prior licenses claimed or owned by the Grantee in the Town of Paradise Valley, Arizona. Grantee shall be liable for License Fees for the annexed area beginning with the annexation date or the extended License Area beginning when the License Area is mutually extended by the Parties. The terms of this License shall govern in the Town and the newly annexed areas upon the effective date of any annexation.
3. Term of License. The License commences on the Effective Date and will expire five (5) years thereafter. Provided, however, the License may be renewed as provided in Article II, Section 5 of this Agreement or terminated as provided in Article VIII, Section 1 of this Agreement. The period of time that the License is in effect is referred to as the "Term."
4. Nonexclusive License. The License hereby granted is not exclusive and nothing in this Agreement affects the right of the Town to grant any

Person a license to occupy and use the Streets to install, operate, upgrade, repair and remove Equipment for the purpose of providing any Services or service, or to engage in any other activity in the Streets. Nothing in this Agreement affects the right of the Town to occupy and use the Streets to install, operate, upgrade, repair and remove Equipment for the purpose of providing any Services or service, or to engage in any other activity in the Streets.

5. Renewal. The Grantee may submit a written petition to the Town to renew the License for three (3) additional five (5) year terms, not later than six (6) months nor more than eighteen (18) months before the end of the initial Term.

### ARTICLE III COMPENSATION AND OTHER PAYMENTS

1. License Fee. The Grantee shall pay to the Town an Annual License Fee equal to \$25,000 for the Term of this License, subject to the annual inflation adjustment as defined below ("License Fee"). The Grantee's obligation to pay the License Fee shall commence on the Effective Date, be prorated from the Effective Date to January 1, 2008, and continue throughout the Term. License Fee payments shall be calculated on an annual basis, each annual payment due as of January 1 of each year, with actual payment to be no later than the first day of March of each year. The License Fee shall be adjusted starting with the payment due on January 1, 2009 pursuant to the "CPI", which shall mean the Revised Consumer Price Index, U.S. City Average for all Urban Consumers--All Items (1982-1984 equals 100) for the pertinent month, issued by the Bureau of Labor Statistics of the U.S. Department of Labor, and shall be adjusted annually thereafter pursuant to the CPI for the remaining Term of the Agreement. The annual permitted CPI Adjustment shall be the actual percentage increase in the CPI for the preceding twelve (12) month period of the Term of this Agreement.
2. No Credits or Deductions. The compensation and other payments to be made pursuant to this Article III shall not be deemed to be in the nature of a tax and, unless otherwise prohibited by law, or provided herein, shall be in addition to any and all taxes or other fees or charges that the Grantee shall be required to pay to the Town or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee. Notwithstanding anything to the contrary contained in this Agreement or otherwise provided, except for interest charges and audit fees payable pursuant to Article III, Section 4, the License Fee shall be the only fee, charge or other amount payable to the Town by Grantee for the License or in connection with Grantee's use and occupancy of the Streets pursuant to this Agreement.
4. Remedy for Late Payment. If any payment required by this Agreement is not actually received by the Town on or before the applicable due date fixed in this Agreement, the Grantee shall pay interest thereon,

compounded daily from the due date to the date paid, at an interest rate of 1% per month for the period of delinquency.

5. Ordinary Business Expense. Nothing in this Agreement is intended to prevent the Grantee from treating the compensation and other payments that it pays pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting said payments from gross income in any federal, state or local income tax return.

#### **ARTICLE IV SERVICES**

1. Quality. All work involved in the installation, maintenance, operation, upgrade, repair and removal of Equipment in the Streets shall be performed in a safe, thorough and reliable manner using materials of good and durable quality and shall be constructed by use of trenchless construction technologies.
2. New Grades or Lines or Municipal Improvements. If the grades or lines of any Street within the License Area are changed at any time during the term of this Agreement or if any public works, public improvements, or alteration of any municipal structures require the movement or relocation of the Communication System or any portion thereof, then the Grantee shall, at its own cost and expense not less than ninety (90) days from receipt of advance written request of the Town or such other time as may be technically feasible, protect or promptly alter or relocate the Communication System, or any part thereof, so as to conform with the Town's requirements for such new grades or lines, public works, public improvements, or alteration of any municipal structures. In the event that the Grantee refuses or neglects to so protect, alter, or relocate all or part of the Communication System, the Town shall have the right to break through, remove, alter, or relocate all or any part of the Communication System without any liability to the Grantee, except for the gross negligence or willful or intentional misconduct of Town and its employees and agents, and the Grantee shall pay to the Town the costs incurred in connection with such breaking through, removal, alteration, or relocation. To the extent the relocation of the Communication System, or any portion thereof, is required pursuant to a private development project, the Grantee shall not be responsible for the costs associated with such relocation.
3. Protection of Structures. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the Communications System, the Grantee shall, at its own cost and expense, protect any and all existing structures belonging to the Town and all designated landmarks. The Grantee shall obtain the prior approval of the Town before altering any water main, sewerage or drainage system, or any other municipal structure in the Streets required because of the presence of the Communications System in the Streets. Any such alteration shall be made by the Grantee, at its sole cost and expense, and in a manner prescribed by the Town. The Grantee agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may

be specified by the Town, any Street or any Town structure involved in the construction, operation, maintenance, repair, upgrade or removal of the Communication System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Grantee pursuant to the Agreement.

4. No Obstruction. In connection with the installation, maintenance, operation, upgrade, repair or removal of Equipment, the Grantee shall not obstruct the sidewalks, streets, subways, railways, rivers or other traffic to, from or within the corporate limits of the Town without the prior consent of the Town. Equipment of the Grantee in the Streets shall be located so as to cause minimum interference with the use of the Streets and adjoining property.
5. No Interference. In connection with the installation, maintenance, operation, upgrade, repair or removal of Equipment in the Streets, the Grantee shall use its best efforts so as to not interfere with the technical operation of any other Communications System within the corporate limits of the Town.
6. Moving Equipment. The Grantee shall, upon reasonable prior written notice by the Town or any Person holding a permit issued by the Town to move any structure and, within the time that is reasonable under the circumstances, temporarily move Equipment in the Streets to the extent commercially reasonable to permit the moving of said structure. The Grantee may impose a reasonable charge on any Person other than the Town for any such movement of its Equipment.
7. Private Property. In the event that Grantee crosses over or under any private property in providing the services described hereunder, Grantee shall first obtain the written permission of the private property and, after completion of the work, reasonably return the property to its original condition. No third party rights shall arise out of this provision and only the Town and Grantee may enforce the provisions of this Agreement.

#### **ARTICLE V. OVERSIGHT AND REGULATION**

1. Town's Right to Approve and Inspect. The Communication System constructed, installed, operated and/or maintained pursuant to this License shall be constructed, installed, operated and/or maintained in accordance with established practices with respect to public rights-of-way and easements, and the public rights-of-way and easements under the control of the Town shall be used according to plans approved by the Town Engineer, provided that approval shall not be unreasonably conditioned, withheld or delayed. The Town shall have the right to periodically inspect the construction, operation, maintenance and upgrade of the System, and all parts thereof, in accordance with the provisions of this Agreement and applicable law, including the Town's police power. A Grantee representative shall accompany the Town during any such inspection.

2. Permits. Except for the installation of Drops, ordinary and customary maintenance activities, and during emergencies, Grantee shall obtain all construction, building or other permits or approvals necessary before installing, operating, upgrading, repairing, and removing Equipment in the Streets.
3. The Communication System. Grantee will provide conduit, innerduct, dark fiber optical cable infrastructure and will not provide transmission or lit service over its facilities. The Communication System to be established by Grantee will be of such limited scope that it will not constitute an intrastate telecommunications network. Grantee does not have to obtain a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission and is exempt from any requirement by the Town that the Grantee obtain a CC&N. If the Grantee's uses of the Communication System changes to serving as an intrastate telecommunications network, Grantee shall provide the Town with notice within 30 days following this change and shall initiate the process for obtaining a CC&N from the Arizona Corporation Commission.
4. Reports. At the request of the Town, the Grantee shall promptly submit to the Town such information as the Town may reasonably request regarding the Grantee and any Affiliated Person to verify compliance with any term or condition of this Agreement, including financial records.
5. Books and Records. Throughout the Term, the Grantee shall maintain and make available to the Town within thirty (30) business days after receiving a written request, complete and accurate books of account and records of the business, ownership, and operations of the Grantee with respect to the Equipment in the Streets and to enable the Grantee to demonstrate, at all times throughout the Term that it is, and has been, in material compliance with each term and condition of this Agreement. All such documents shall be retained by the Grantee for a minimum of three (3) years.
6. Public Emergency. In the event of a public emergency, Town shall have the right, upon reasonable advance notice to Grantee, to sever, disrupt, or dig-up facilities of Grantee, after all reasonable efforts have been made, given the constraints of such public emergency, (i) to contact Grantee prior to any such action and (ii) to avoid severing, disrupting or digging up the facilities of Grantee. Town shall, where reasonable, work with Grantee in responding to the emergency. A public emergency shall be any condition which poses an immediate threat to the safety or welfare of the citizens of the Town.
7. Arizona Blue Stake Center. Grantee shall comply with Arizona Revised Statutes § 40-360.21 et seq. by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Grantee's facilities upon receipt of a locate call or as promptly thereafter as possible, but in no event later than two (2) working days after receipt of a locate call. A copy of their agreement or proof of membership shall be filed with the City.

8. Performance Bonds. The Grantee shall file and maintain until completion of the initial construction of the Communications System a performance bond in favor of the Town in the sum of Fifty Thousand Dollars (\$50,000) as security for the faithful performance by Grantee of all the provisions of this Agreement, compliance with all orders, permits and directions of the Town, and the payment by the Grantee of any claims, liens and taxes due the Town which arise by reason of the construction of the Communications System. After completion of the construction of the Communications System by Grantee, the Grantee shall maintain a bond in the sum of Fifty Thousand Dollars (\$50,000) until termination of this Agreement as security for the faithful performance by Grantee of all the provisions of this Agreement, and the payment by the Grantee of any claims, liens and taxes due the Town which arise by reason of the operation and maintenance of the Communications System. 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 the Town for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Grantee, as principal, and by a corporation licensed by the Arizona Insurance Commissioner to transact the business of a fidelity and surety insurance company, as surety, and said bond shall be approved by the Town. Town shall have the right to draw against the performance bond after notice and an opportunity to cure as provided in Article VIII, Section 2, in the event of a breach by Grantee in any of its obligations under this Agreement. Within thirty (30) days of receipt of written notice from Town, Grantee shall renew or replace such sums of money as shall bring the performance bond current to the full amount stipulated herein.

## **ARTICLE VI LIABILITY AND INSURANCE**

1. Insurance—Specifications. Upon the Effective Date, Grantee shall, at its sole expense, take out and maintain during the term of this License general liability insurance that protect Grantee and contain, or are endorsed to contain provisions naming the Town and its officials, officers, directors, employees and agents as additional insureds, and which protect them against claims which may arise from operations under this License, whether such operations be by Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Five Million and No/100 Dollars (\$5,000,000.00). The above limits may be satisfied using a combination of primary and excess coverage. Additionally, Grantee shall be deemed to have satisfied the conditions of this section if it maintains a self-insurance program with retention limits no greater than one million dollars (\$1,000,000), together with excess liability insurance for the remaining limits. The insurer shall agree to waive transfer rights of

recovery (subrogation) against the Town, its officials, officers, directors, employees and agents for any claims arising out of Grantee's acts, errors, mistakes, omissions, work or service. Grantee's insurance coverage shall be primary insurance with respect to the Town, its officials, officers, directors, employees and agents. Any insurance or self-insurance maintained by the Town, its officials, officers, directors, employees and agents shall be in excess of the coverage of Grantee's insurance and shall not contribute to it.

2. Workers' Compensation. Grantee shall also maintain Workers' Compensation and Employers Liability Coverage in an amount no less than the statutory limits required by the State of Arizona.
3. Insurance--Maintenance. The liability insurance policies required in Article VI, Section 1 shall be maintained by the Grantee throughout the Term and such other period of time during which the Grantee operates or is engaged in the removal of Equipment.
4. Liability of Grantee. The Grantee shall: (a) be responsible for and defend, indemnify and hold harmless the Town and any Person, including, without limitation, any officer, employee, agent, attorney, consultant and independent contractor of the Town from and against any and all liabilities of the Town, whether special, incidental, consequential or punitive, and all other damages, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with the installation, maintenance, operation, upgrade, repair or removal of Grantee's Equipment or the provision of Services by Grantee through the Grantee's Equipment; and (b) cooperate with the Town by providing such non-financial assistance as may be requested by the Town in connection with any claim arising out of or in connection with the selection of the Grantee for, or the negotiation or award of, this Agreement. The Grantee shall, at its own cost and expense, replace, repair or restore any damaged property, damaged by Grantee, to its prior condition.
5. Liability of Town. Except as otherwise set forth herein, the Town, its officers, employees, agents, attorneys, consultants and independent contractors shall not be responsible for any liability of the Grantee, any Affiliated Person or any other Person, arising out of or in connection with the installation, maintenance, operation, upgrade, repair or removal of Equipment or the provision of Services through the Equipment. Except as otherwise set forth herein, the Town, its officers, employees, agents, attorneys, consultants and independent contractors shall not be responsible to the Grantee or any Affiliated Person for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any Equipment by or on behalf of the Grantee or the Town in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Street or the elimination, discontinuation and closing of any Street, as provided in this Agreement; provided, however, that this sentence relieving the Town from any such

liability shall not apply to acts of gross negligence or intentional or willful misconduct or to damages caused by violations by the Town of any laws or ordinances. Nothing herein shall be deemed an admission of liability by the Town nor be interpreted to waive any protection for the Town against any liability under the law.

## **ARTICLE VII TRANSFER RESTRICTIONS**

1. Transfer of Control. No change in Control of the License shall occur after the Effective Date, without the prior written consent of the Town, other than to an Affiliated Person of Grantee, provided that the Town shall consider any such action in accordance with its usual procedural rules. The Town shall not unreasonably withhold consent.
2. Petition. The Grantee shall promptly notify the Town of any proposed action requiring the consent of the Town pursuant to this Article VII by submitting to the Town a petition requesting approval or requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Grantee's argument as to why such action would not involve a change in Control of the Grantee or the License, and such additional supporting information as the Town may reasonably require in order to review and evaluate the petition. The Town shall expeditiously review the petition and notify the Grantee of its findings.
3. Consideration of the Petition. The Town may take such actions, as it deems appropriate in considering the petition and determining whether consent is needed or should be granted. After receipt of a petition, the Town may, as it deems necessary or appropriate, schedule a public hearing on the petition. Except to the extent prohibited by law, the Grantee shall provide all requested assistance to the Town in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action. Within thirty (30) days of receiving a request for transfer, the Town shall notify the Grantee in writing of additional information it requires, if any, to determine the legal, financial, and technical qualifications of the transferee. If the Town has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent to the transfer shall be deemed given.
4. Conditions. The Town shall grant consent to a transfer subject to Article VII, Section 2 if: (a) the Town has reasonable assurance from the proposed transferee that the transferee will comply with all the terms and conditions set forth in this Agreement; (b) the Town has reasonable assurance that any breaches by the Grantee of any terms or conditions in this Agreement will be cured in a manner reasonably satisfactory to the Town.

5. Permitted Encumbrances. Nothing in this Article VII shall be deemed to prohibit or require consent for any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Communications System, or any right or interest therein, for financing purposes, provided that each such assignment, pledge, lease, sublease, mortgage or other transfer shall be subject to the rights of the Town pursuant to this Agreement and applicable law. The consent of the Town shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Grantee of all or any part of the System pursuant to the rights of such secured creditor under the laws of the State of Arizona, provided, further that the Town's rights are in no way adversely affected or diminished.

## ARTICLE VIII TERMINATION

1. Termination Events. Consistent with the terms and conditions of Article VIII, Section 2 of this Agreement, the Town, at its option, may terminate the Agreement upon:
  - a) any material breach of the Agreement not remedied in accordance with Section 2 of this Article VIII; and
  - b) any persistent and repeated failure of the Grantee to comply with any term, condition or provision of this Agreement or any other agreement, law, regulation, rule or order of the Town, so long as (i) the Town has notified Grantee of such failure, and (ii) such failure is reasonably related to Grantee's License.
2. Breach Procedures. The Town shall notify the Grantee, in writing, of an alleged breach, or persistent failure to comply with this Agreement which notice shall specify the alleged breach with reasonable particularity. The Grantee shall, within forty-five (45) days after receipt of such notice or such longer period of time as the Town may specify in such notice, either cure such alleged breach or, in a written response to the Town, either present facts and arguments in refutation or excuse of such alleged breach or state that such alleged breach will be cured and set forth the method and time schedule for accomplishing such cure.

If the Town determines that a breach has occurred and that such breach is not excusable and has not been or will not be cured by the Grantee in a manner and in accordance with a schedule reasonably satisfactory to the Town, then the Town shall prepare a written report which may recommend the action to be taken by the Town's governing body. The Town shall provide notice and a copy of such report to the Grantee. In the event that the Town's governing body determines that such breach has not occurred, or that such breach either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the Town's governing body, or that such breach is excusable, such determination shall conclude the investigation. If the Town's governing body determines that such breach has occurred, and that such breach

has not been and will not be cured in a manner and in accordance with a schedule reasonably satisfactory to the Town's governing body, and that such breach is not excusable, and the Grantee and Town fail or cannot otherwise agree to a fair and equitable solution, conditions and regulations, including but not limited to resolving said matter within a reasonable period of time, the Grantee and the Town shall enter into binding arbitration.

Any dispute between the parties hereto, including but not limited to disputes or controversies arising from or related to interpretation of this License, may be arbitrated. Such arbitration will be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

The Town may initiate arbitration by resolution of its Town Council with written notice thereof sent to Grantee, while Grantee may choose to initiate arbitration by sending written notice to the Town.

After arbitration has been initiated, the Town and Grantee may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within 20 days after the arbitration has been initiated, either party may file a petition seeking the appointment of an arbitrator, who shall be selected by a court in the State of Arizona located in the County of Maricopa ("State Court").

3. Rights upon Expiration or Termination. In the event of any termination of this Agreement, whether pursuant to this Article VIII or upon the expiration of the Term without renewal, unless Grantee is removing the Equipment or selling the Equipment to another Person who has a valid franchise or license agreement to operate and maintain the Equipment in the Streets in the Town, the Grantee shall, at the Town's election, (i) sell the Equipment to the Town or to the Town's designee for an agreed upon price, but if the parties cannot agree upon a price for the Equipment in accordance with the terms of this Agreement, at Town's sole option, (ii) permanently abandon the Equipment in place, or (iii) promptly remove its facilities to the reasonable satisfaction of the Town and without cost or expense to the Town and to restore the public rights-of-way to a reasonable condition under the supervision of the Town. Any such facilities which are not removed as required by the Town within one hundred twenty days (120) of either the date of termination or revocation or of the date the Town issued a permit authorizing removal, whichever is later, automatically shall become the property of the Town. Upon permanent abandonment, if the Town does not require removal, the Grantee shall submit to the Town a proposal and instruments for transferring ownership to the Town. Grantee shall promptly notify Arizona Blue Stake Center to record the facilities abandoned.

**ARTICLE IX  
SUBSEQUENT ACTION**

1. Compliance with Agreement. The Grantee shall at all times comply with all provisions in this Agreement and all amendments and modifications to this Agreement.
2. Partial Invalidity. If any section, subsection, sentence, clause, phrase or other portion of this Agreement is, for any reason, declared invalid in whole or in part by any court, agency, commission, legislative body or other authority of competent jurisdiction such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. The Town and the Grantee shall, to the extent consistent with such declaration, negotiate in good faith to amend this Agreement, to the extent and in a form reasonably acceptable to the parties, so as to enable the Grantee to continue to perform its obligations in the manner as that immediately prior to such declaration and to ensure the Town receives benefits under this Agreement equal to the benefits immediately prior to such declaration.

**ARTICLE X  
MISCELLANEOUS**

1. Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification hereof, except as specified in such Appendices or elsewhere in this Agreement.
2. Entire Agreement. This Agreement, including all Appendices, embodies the entire understanding and agreement of the Town and the Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the Town and the Grantee with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the Town or the Grantee.
3. Delays and Failures Beyond Control of Grantee. Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage or other events, where the Grantee has exercised all due care in the prevention thereof, to the extent that such causes or

other events are beyond the control of the Grantee and such causes or events are without the fault or negligence of the Grantee. In the event that any such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Grantee agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Grantee shall notify the Town in writing of the occurrence of an event covered by this Article X, Section 3 within fifteen (15) business days of the date upon which the Grantee learns of its occurrence.

4. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations, or other direction or communication hereunder by any party to another shall be in writing and shall be sufficiently given and served upon the other party, immediately if delivered personally or by telex or telecopy (provided with respect to telex and telecopy that such transmissions are received on a business day during normal business hours), the first business day after dispatch if sent by express mail, and the third business day after dispatch if sent by first class mail, registered or certified, return receipt requested, postage prepaid, and addressed as follows:

TOWN: Town of Paradise Valley  
Town Manager  
6401 East Lincoln Drive  
Paradise Valley, AZ 85253-4399

With a copy to: Town of Paradise Valley  
Town Attorney  
6401 East Lincoln Drive  
Paradise Valley, AZ 85253-4399

GRANTEE: AGL Networks, LLC  
10 Peachtree Place, N.W.  
Atlanta, GA 30309  
Attn: Manager Commercial Transactions  
Phone: 404-584-4315  
Fax: 404-584-3375

With a copy to: Friend, Hudak & Harris, LLP  
Attn: Norman B. Gerry, Esq.  
Three Ravinia Drive, Suite 1450  
Atlanta, Georgia 30346  
Phone: 770-399-9500  
Fax: 770-395-0000

5. Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Grantee to the Town set forth elsewhere in this Agreement, the Grantee represents and

warrants to the Town and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Town) that, as of the Effective Date:

a) Organization, Standing, Power, Authorization and Enforceability. The Grantee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of Arizona. The Grantee has all requisite power and authority to own or lease its properties and assets in the Streets, and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Grantee and this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Grantee and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Grantee and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms.

b) Grantee has obtained all approvals, authorizations and permits (including, without limitation, the FCC or any other Federal agency or any state, county or municipal agency, authority, commission or council and, if applicable, public utility commissions, telephone companies and other entities) as required for the valid execution and delivery of this Agreement or any other agreement or instrument executed or delivered in connection herewith.

c) Compliance with Law/Cancellation. The Grantee is in compliance with all laws, agreements, decrees and governmental rules and regulations applicable to the installation, maintenance, operation, upgrade, repair or removal of Equipment in the Streets, and has obtained all government licenses, permits, and authorizations necessary for the provision of Services. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511 regarding conflicts of interest.

d) Litigation; Investigations. Except as disclosed in writing to the Town prior to the execution of this Agreement, there is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim (including, without limitation, proceedings with respect to unfair labor practice matters or labor organization activity matters), pending or threatened against the Grantee or any Affiliated Person, at law or in equity, or before any foreign, federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, including, without limitation, matters involving the granting of a temporary or permanent injunction against the Grantee that, if granted, would have a material adverse effect on Grantee's compliance with this Agreement, or which questions the validity or prospective validity

of this Agreement, or of any essential element upon which this Agreement depends, or of any action to be taken by the Grantee pursuant to this Agreement.

e) Licenses and Permits. The Grantee has duly secured, or will secure prior to installation of Equipment in the Streets, all necessary permits and licenses in connection with the installation, maintenance, operation, upgrade, repair and removal of Equipment and the provision of Services therewith and has filed all required registrations, applications, reports and other documents with the FCC and public utilities commissions and other entities exercising jurisdiction over the provision of communications services or the construction of delivery systems therefore. Further, no event has occurred that could result in the revocation or termination of any such license or authorization. No event has occurred that permits, or after notice or lapse of time or both would permit, revocation or termination of any such license. The Grantee has obtained all leases, easements and equipment rental or other agreements necessary for the installation, maintenance, operation, upgrade, repair or removal of the Equipment in the Streets.

6. Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Grantee of its obligations under this Agreement, in consideration of the License, the Grantee, as applicable, agree that they will comply with the following affirmative covenants, unless the Town otherwise consents in writing:

a) Compliance with Laws; Licenses and Permits. The Grantee shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the FCC and any other federal, state agency or authority of competent jurisdiction) necessary to install, maintain, operate, upgrade, repair and remove Equipment; and (ii) all local laws and all rules, regulations, orders, or other directives of the Town issued pursuant to this Agreement. The Grantee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to install, operate, upgrade, repair and remove Equipment and provide Services therewith.

b) Condition of Equipment. All Equipment will be maintained in good repair and proper working order and condition throughout the Term.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement apply to the Grantee, its successors, and assigns.

8. No Waiver; Cumulative Remedies. No failure on the part of either party to exercise and no delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations established in this Agreement. Nothing contained in this Agreement shall impair any of the rights of either party under applicable law, subject in

each case to the terms and conditions of this Agreement. A waiver of any right or remedy by either party at any time shall not affect the exercise of such right or remedy or any other right or other remedy by either party at any other time. In order for any waiver of either party to be effective, it must be in writing.

9. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
10. Headings; Other Terms. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby", "herein", "hereof", "hereinafter", "hereunder" and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular and vice versa unless the context otherwise requires.
11. No Agency. The Grantee shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the Town.
12. Survival. All representations and warranties contained in this Agreement shall survive the Term. The Grantee acknowledges that certain of the obligations to be performed under this Agreement are to be performed after the License terminates or expires and such obligations shall survive the term.
13. Delegation of Town Rights. The Town reserves the right to delegate and re-delegate, from time to time, any of its rights or obligations under this Agreement to any body, organization or official. Upon any such delegation or re-delegation, references to "Town" in this Agreement shall refer to the body, organization or official to whom such delegation or re-delegation has been made. Any such delegation by the Town shall be effective upon written notice by the Town to the Grantee of such delegation. Upon receipt of such notice by the Grantee, the Grantee shall be bound by all terms and conditions of the delegation not in conflict with this Agreement. Any such delegation, revocation or re-delegation, no matter how often made, shall not be deemed an amendment to this Agreement or require any consent of the Grantee.
14. Claims Under Agreement. The Town and the Grantee, on its behalf and on behalf of its Guarantor(s), agree that any and all claims asserted by or

against the Town arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in Arizona ("Federal Court") or in a court of the State of Arizona located in the County of Maricopa, ("State Court").

15. Modification. Except as otherwise provided in this Agreement, any Attachment to this Agreement, or applicable law, no provision of this Agreement nor any Attachment to this Agreement, shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Town and the Grantee, which amendment shall be authorized on behalf of the Town through the adoption of an appropriate resolution or order by the Town, as required by applicable law.

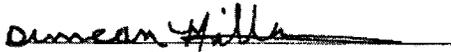
PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, this 12<sup>th</sup> day of July, 2007.

**TOWN OF PARADISE VALLEY**



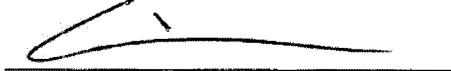
Thomas Martinsen  
Town Manager

ATTEST:



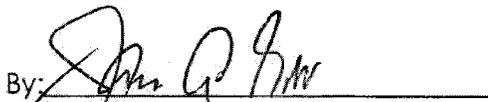
Duncan Miller  
Town Clerk

APPROVED AS TO FORM:



Andrew Miller  
Town Attorney

**AGL NETWORKS, LLC**

By: 

Name: James A. Billis

Its: President

Attachment "A" Map of Initial License Area



**ACL Networks**  
An ABL Resources Company

AGLN Network

City of Paradise Valley - 18 miles

Limited Access Highway

Local Road

Ramp

Municipality

Paradise Valley

Phoenix

Paradise Valley

Scottsdale

6919 E Double Tree

COXCOM, INC.  
TOWN OF PARADISE VALLEY  
CABLE TELEVISION LICENSE AGREEMENT

DECEMBER 31, 2007

417003..6

**EXHIBIT TO STF 1.9**

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This Cable Television License Agreement (the "License") is made and entered into on this \_\_\_ day of December, 2007 by and between the Town of Paradise Valley ("Town") and CoxCom, Inc., a Delaware corporation ("Licensee").

### RECITALS

- A. The Town is authorized to grant, renew, deny, and terminate licenses for the installation, operation, and maintenance of Cable Systems and otherwise regulate cable communications services within the Town boundaries by virtue of federal and state statutes, by the Town's police powers, by its authority over its public rights-of-way, and by other Town powers and authority.
- B. Licensee has maintained and operated a Cable System in the Town pursuant to a License Agreement dated March 22, 1990 (the "1990 License"), extended to American Cable Television, Inc. (transfer and control of which has since been made to Licensee), and except as otherwise provided herein Licensee has agreed to be subject to the provisions of the Cable Code in effect at the time this License is granted and as subsequently amended pursuant to the Town's police powers and taxing authority.
- C. On February 24, 2005, the 1990 License was amended to extend the term of the 1990 License through September 22, 2007.
- D. On September 6, 2007, the 1990 License was amended to extend the term of the 1990 License through December 31, 2007.
- E. Upon the expiration or earlier termination of the 1990 License, as extended, Licensee desires to enter into a new license to provide Cable Services within the Town.
- F. The Town has reviewed cable communications service in the Town, including but not limited to a review of Licensee's record of service in the Town and in the Phoenix metropolitan area, Licensee's facilities, the cable-related community needs of the Town for both the present and future, Licensee's ability to carry out its commitments, and Licensee's overall financial, legal, and technical qualifications to hold a cable television license in the Town.
- G. The Town hereby finds that it would serve the public interest to enter into a new cable television license, under the terms and conditions hereinafter set forth, and the Licensee agrees to accept a cable television license under these conditions.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

1. Definitions. As provided for in Section 14-2-4.2 of the Cable Code, to the extent that the definitions set forth in this Section are inconsistent with the definitions in the Cable Code, the definitions contained in this License shall replace the definitions set forth in Section 14-1-3 of Cable Code, which shall not be applicable to this License. To the extent that capitalized terms

are not otherwise defined in this Section, they shall have the meanings ascribed to them in Section 14-1-3 of the Cable Code.

1.1. "Cable Code" means Chapter 14 of the Paradise Valley Town Code.

1.2. "Cable Services" or "Cable Service" means (a) the one way transmission to Subscribers of video programming and other programming services and (b) Subscriber interaction, if any, that is required for the selection or use of such programming and programming services.

1.3. "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, that includes video programming, and that is provided to multiple Subscribers within the Town. Cable System does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves Subscribers without using any public Street, road or alley; (c) a facility of a common carrier that is subject, in whole or in part, to 47 United States Code sections 201 through 276, except that the facility is considered a cable system, other than for purposes of 47 United States Code section 541(c), to the extent the facility is used in the transmission of video programming directly to Subscribers, unless the extent of the use is solely to provide interactive on-demand services; (d) an open video system that complies with 47 U.S.C. § 573; or (e) any facility of an electric utility used solely for operating its electric utility systems. Any reference to Licensee's Cable System refers to the Cable System as a whole or any part thereof. "Interactive on demand services" means a service providing video programming to Subscribers over switched networks on an on demand, point to point basis, but does not include services providing video programming prescheduled by the programming provider.

1.4. "Education Access Channel" means any channel or bandwidth on a Cable System set aside by Licensee for educational use.

1.5. "FCC" means the Federal Communications Commission, or a designated representative.

1.6. "Government Access Channel" means any channel or bandwidth on a Cable System set aside by Licensee for governmental use.

1.7. "Gross Revenues" means all cash, credits, property of any kind or nature, or other consideration, less related bad debts, received directly or indirectly by the Licensee, its affiliates, subsidiaries, parent or any other person, firm or corporation in which Licensee has a financial interest or which has a financial interest in Licensee, derived from the Licensee's operation of its Cable System within the County to provide cable services within the County, including, all revenues from: (a) all charges for cable services provided to Subscribers; (b) all charges to the customer for the installation, removal, connection and reinstatement of equipment necessary for a customer to receive cable services; and (c) any other income derived from the Cable System including, forfeited deposits recovered, sale or rental by Licensee to customers of equipment for the provision of Cable Services, late charges, interest income, sale of program guides and all other receipts from customer. "Gross Revenues" shall not include revenue from:

- 1.7.1. any charges for the insertion by Licensee of commercial advertising upon the cable system;
  - 1.7.2. any charges for the use or lease of studio facilities of the cable system;
  - 1.7.3. any charges for the use of leased access channels or bandwidth;
  - 1.7.4. the production for transmission over the cable system of video programming by licensee, including programming produced by its mobile facilities;
  - 1.7.5. the sale, exchange, use or cablecast of any programming by Licensee within Maricopa County;
  - 1.7.6. revenues received from programmers of home shopping services for sales to Licensee's customers;
  - 1.7.7. launch fees or marketing expense reimbursements paid by programmers; and
  - 1.7.8. License fees, taxes, or other fees or charges that Licensee collects and pays to any governmental authority; any increase in the value of any stock, security, or asset; or any dividends or other distributions made in respect to any stock or security.
- 1.8. "License Area" means the current incorporated boundaries of the Town and any future annexed area.
  - 1.9. "License Fee" shall be the fee set forth in Section 6 hereof.
  - 1.10. "Multiple Dwelling Units" means any adjacent building(s) such as apartments under common ownership containing more than four dwelling units used as living quarters.
  - 1.11. "Public Safety Channel" means the channel provided for in Section 5.3 of this License.
  - 1.12. "Town Council" means the present governing body of the Town or any future Council constituting the legislative body of the Town.
  - 1.13. "Town Manager" means the Town Manager or the Town Manager's designee.
  - 1.14. For the purposes of this License, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory – not merely directory. All references to days mean calendar days, unless otherwise specified.

2. Grant of Authority to Operate; Term.

2.1. The Town hereby grants to Licensee the right and authority to engage in the business of operating and providing a Cable System in the License Area and for that purpose to erect, install, solicit, construct, repair, replace, rebuild, reconstruct, maintain, and retain in, on, over, upon, across, and along any Public Streets or public ways such poles, wires, cable fiber optics, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary or appurtenant to the Cable System; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms, or corporations, including but not limited to any public utility or other party licensed or permitted to do business in the Town.

2.2. This grant of authority shall run for a term of fifteen years, beginning at 11:59 p.m. on December 31, 2007, and ending at 11:59 p.m. on December 31, 2022. The 1990 License, as extended, shall terminate upon the beginning of the term of this License.

3. Controlling Authorities.

3.1. Except as otherwise set forth herein, this License is subject to and shall be governed by all terms, conditions, and provisions of the Cable Code in effect at the time the License is granted and as subsequently amended by the Town pursuant only to its police powers and taxing authority.

3.2. This License is subject to and shall be governed by all requirements of (a) the Cable Communications Policy Act of 1984, as amended, including the Telecommunications Act of 1996; (b) the Arizona Revised Statutes Sections 9-505 through 9-510; and (c) other federal and state laws and regulations governing cable communications. In a conflict between the terms and conditions of this License and the terms and conditions on which the Town can grant a License, federal and state law shall control.

4. System Design; Capacity.

4.1. At all times during the term of this License, Licensee shall provide the cable capacities and channels actually being provided in the City of Phoenix as of the effective date of this License.

4.2. The Cable System, as installed, uses a hybrid fiber optic/coaxial cable network. The Cable System is built so that fiber is provided to all neighborhood nodes. Extending from each optic site is radio frequency coaxial cable.

4.3. The channel capacity of the Cable System is expandable as future needs arise. At a minimum, system capacity of 750 MHz shall be available for signal transmission on the Cable System.

5. Government and Education Access and Public Safety Channels.

5.1. As provided for in Section 14-2-4.2, the provisions of this Section replace Sections 14-4-6 and 14-4-7 of the Cable Code, which shall not be applicable to this License.

5.2. Within one hundred twenty days of written request by the Town, Licensee shall make available at no charge to the Town one channel on the Cable System designated as a Government Access Channel to be used by Town government officials and agencies. The Government Access Channel shall originate from a studio at a location designated by the Town within the main Town Hall offices. Licensee shall establish the connection to the Cable System necessary for such channel to originate from this location at no cost to the Town. The Town shall provide at its expense the studio and all equipment and facilities necessary for operation of the Government Access Channel.

5.3. Within one hundred twenty days of written request by the Town, Licensee shall make available at no cost to the Town one Public Safety Channel for downstream use by the Paradise Valley Fire and Police Departments. At no cost to the Town, Licensee shall secure the audio and video portions of the signal delivered over the channel so that the signal may only be received by specially equipped converters installed at each municipal fire and police facility located within the corporate limits of the Town. The Town shall provide, at its expense, all other equipment and facilities necessary for operation of the Public Safety Channel. The Licensee and the Town shall annually review the use of the Public Safety Channel and, upon their mutual agreement, the Town may relinquish the Public Safety Channel to the Licensee for use as the Licensee sees fit. Within one hundred twenty days of written notice by the Town, Licensee shall provide interconnection with the City of Phoenix Public Safety Channel until such time as the Town desires to air downstream programming on the Public Safety Channel. The Town shall be responsible for obtaining the necessary consent from the City of Phoenix for the Town to receive the public safety programming from Phoenix. Until the necessary consent is received, Licensee shall not be required to provide the Town with such programming from the City of Phoenix.

5.4. Within one hundred twenty days of written request by the Town, Licensee shall make available at no charge to the Town one channel on the Cable System designated as an Education Access Channel on the Cable System. Licensee shall establish the connection to the Cable System necessary for such channel to originate from an origination point within the Town at no cost to the Town. The Town shall provide at its expense all equipment and facilities necessary for operation of the Education Access Channel.

5.5. Licensee shall, in its sole discretion, determine the tier and channel location of the Government Access Channel, the Public Safety Channel, and the Education Access Channel and the method for delivering these channels.

5.6. The Licensee shall provide at no charge to the Town prompt and regular periodic maintenance and replacement of any cables, amplifiers, and other distribution equipment owned by the Licensee and used for the Education Access Channel, the Government Access Channel or the Public Safety Channel. If the Town elects to relocate the point of origination for the Education or Government Access Channel or the Public Safety Channel, the Town shall bear the entire cost of such relocation.

5.7. The operation of the Public Safety Channel, the Government Access Channel, and the Education Access Channel shall be the responsibility of the Town.

5.8. The Licensee may utilize unused Government Access Channel, Education Access Channel, or Public Safety Channel capacity for any purpose under rules and procedures established by the Town. Except as so permitted, neither party may permit commercial programming to be carried on the Government Access Channel, the Education Access Channel, or the Public Safety Channel.

6. License Fee.

6.1. As provided for in Section 14-2-4.2 of the Cable Code, the provisions of this Section replace Sections 14-5-1 and 14-5-2 of the Cable Code, which shall not be applicable to this License.

6.2. For the reasons that the Streets and other public rights of way that are used by the Licensee in the operation of its Cable System within the boundaries of the Town are valuable public properties acquired and maintained by the Town at great expense to its taxpayers, and that the grant to the Licensee for the use of said Streets is a valuable property right without which the Licensee would be required to invest substantial capital in right of way costs and acquisitions, and because the Town will incur costs in regulating and administering the License, the Licensee shall pay to the Town a quarterly License Fee in the amounts set forth below in accordance with the procedures set forth in this Section.

6.2.1. From January 1, 2008 through December 31, 2008 a fee of 5.404% of Licensee's Gross Revenues (as defined in this License).

6.2.2. From January 1, 2009 through December 31, 2009 a fee of 5.202% of Licensee's Gross Revenues (as defined in this License).

6.2.3. From January 1, 2010 through the remainder of the Term of this License a fee of 5.00% of Licensee's Gross Revenues (as defined in this License).

6.3. In order to comply with A.R.S. § 9-506, there shall be allowed as an offset against the License Fee due under this Section any amounts Licensee paid to the Town during the prior quarter in privilege license taxes; provided, however, that there shall be no offset to the extent that Licensee made payments of privilege license taxes on any gross income (within the meaning of the privilege license tax ordinance) that is not included in Gross Revenues as defined in this License.

6.4. As provided in A.R.S. § 9-506, the cost to Licensee of any Town right of way construction permit, encroachment permit, inspection, zoning review, pavement restoration, and any other fee that Town imposes, under Town code requirements or otherwise, on Licensee's construction activities in the public streets, roads, and alleys shall be included in the License Fee paid to the Town.

6.5. As provided in A.R.S. § 9-506, there shall be allowed as an offset against License Fees due to the Town all costs that the Licensee incurs for repair, renovation, restoration, or reconstruction to comply with any requirements of the Town that exceed the repair and restoration requirements set forth in Section 11 of this License, including but not limited to

repair, renovation, restoration, or reconstruction required by any pavement restoration ordinance or similar ordinance adopted by the Town and applicable to Licensee.

6.6. The provisions of Section 14-4-8 of the Cable Code regarding service to Public Schools shall not be applicable to Licensee.

6.7. The payment of the License Fee shall be made quarterly by delivery of the same to the Town Manager on or before the twentieth day of the following month, with a ten day grace period. At the time License Fees are due, Licensee shall provide to the Town an itemized report detailing (a) the amount of License Fees that would otherwise be due to the Town without offset; (b) a detailed report of all costs incurred by Licensee and the portion of such costs that are being offset; and (c) the amount of License Fees, if any, being paid to the Town after accounting for the offset.

6.8. Adjustments for any overpayment in License Fees or otherwise made by Licensee may be credited against subsequent quarterly License Fee payments due pursuant to this License until Licensee has recovered the amount of the overpayment.

7. Auditing and Financial Records.

7.1. As provided for in Section 14-2-4.2 of the Cable Code, the provisions of this Section replace Section 14-5-4 of the Cable Code, which shall not be applicable to this License.

7.2. The Town shall have the right to inspect the Licensee's income records and the Town and Licensee shall each have the right to audit and to recompute any amounts determined to be payable under this License provided, however, that such audit shall take place within thirty-six months following the close of each of the Licensee's fiscal years for which the audit is desired. Any additional amount due to the Town discovered in the audit shall be paid within thirty days following written notice to the Licensee by the Town, and said notice shall include a copy of the audit report; provided, however, that Licensee shall not be required to pay such deficiency until thirty days after completion of the administrative review process if Licensee commences such process pursuant to the Cable Code. If there is a deficiency in the payment of License Fees to the Town of ten percent or more, the Town may assess the cost of the audit to the Licensee.

8. Line Extension.

8.1. Where there is a request by a developer for an extension to a development that does not meet the requirements of Section 14-6-1.1 of the Cable Code and where, instead of proceeding under Section 14-6-1.1 the developer agrees to pay Licensee's full costs (reasonable labor and materials) of extending the Cable System from the nearest technically feasible point of connection on the Cable System to the nearest Street access to the development, Licensee shall then extend the Cable System within the development, at Licensee's sole cost, if the requirements of Section 14-6-1.1 of the Cable Code are met as measured from the nearest Street access to the development to which the developer paid to have the Cable System extended.

9. Service Drops.

9.1. As provided for in Section 14-2-4.2 of the Cable Code, the provisions of this Section replace Section 14-6-1.2 of the Cable Code, which shall not be applicable to this License.

9.2. Licensee shall make service available to any single family residence or any commercial establishment within the Town at the standard connection charge if the connection requires a Standard Drop (as defined below).

9.3. "Standard Drop" means a cable connection that requires no more than a 250 foot drop measured from the nearest point of a Subscriber's home or place of business to the nearest existing technically feasible point as determined by Licensee from which a Subscriber can be connected to the Cable System. A Standard Drop includes only one outlet and standard materials. A Standard Drop does not include the following (the cost of which shall be assessed directly to the Subscriber): (a) a wall fish; (b) custom installation work, including specific Subscriber requested work that requires non-standard inventory or cable routing requiring construction methods exceeding reasonable underground or aerial work; or (c) the cost of any equipment and construction modifications necessary to provide an adequate signal over the Standard Drop to the Subscriber's residence.

9.4. Absent a showing by Licensee to the Town Manager of unusual circumstances, including without limitation Street crossings, (a) any Standard Drop to a single family residence or dwelling shall be accomplished within ten days of the request for service and (b) any drop that is not a Standard Drop shall be accomplished within twenty days of such request.

9.5. Absent a showing by Licensee to the Town Manager of unusual circumstances, including without limitation Street crossings, (a) any Standard Drop to a commercial establishment shall be accomplished within ten days after the owner of such commercial establishment executes any necessary easement documents and capital contribution agreements and (b) any commercial drop that is not a Standard Drop shall be accomplished within twenty days of the owner's execution of such documents and agreements.

10. Emergency Service.

10.1. As provided for in Section 14-2-4.2 of the Cable Code, the provisions of this Section replace Section 14-4-3 of the Cable Code, which shall not be applicable to this License.

10.2. In accordance with the provisions of FCC Rules and Regulations Part 11, Subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, Licensee shall install and maintain an Emergency Alert System (EAS) and shall transmit all Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) relating to local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Rules and Regulations, Part 11. In any event, the Cable System shall not endanger or interfere with the safety of persons or property in the License Area or other areas where the Licensee may have equipment located.

11. Methods and Materials of Street Repair.

11.1. As provided for in Section 14-2-4.2 of the Cable Code, the provisions of this Section replace Section 14-3-2(2) of the Cable Code, which shall not be applicable to this License.

11.2. In case of disturbance of any street, sidewalk, alley, public way, paved area, or landscaped area by Licensee during construction, installation, or repair of its facilities, Licensee shall, at its own cost and expense and in a manner approved by the Town Engineer, replace and restore such street, sidewalk, alley, public way, paved area, or landscaped area in compliance with Article 5-10 of the Town Code.

12. Effect of Expiration or Termination of License.

12.1. As provided for in Section 14-2-4.2 of the Cable Code, the provisions of this Section replace Section 14-3-8 of the Cable Code, which shall not be applicable to this License.

12.2. Upon expiration or termination of this License for any reason, Licensee shall have one hundred eighty days from the date of expiration or termination to obtain from the Town or other governmental authority any licenses, permits, or other approvals or agreements that may then lawfully be required in order to allow Licensee to continue using Licensee's facilities for any other communication purpose Licensee may then provide. After such period, Licensee's facilities shall remain in the Streets only pursuant to such new approvals and agreements.

13. New Developments.

13.1. The Town and Licensee shall meet at periods not exceeding three years or upon request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community, and other factors impacting cable television. As a result of these discussions, the License may be modified by agreement of the Town and the Licensee to respond to a change in laws, regulations, technology, competing services, the needs of the community, or other factors impacting cable television.

13.2. If any other significant event occurs (including but not limited to changes of federal or state law or a final non-appealable order or judgment by a court of competent jurisdiction that either Licensee or Town believes may impact the current terms and conditions of the License), upon written request of either Licensee or Town the Town Manager and Licensee agree to meet and discuss in good faith the terms of a mutually agreeable License amendment.

13.3. The purpose of the meetings and discussions required by this Section is to use best efforts to reach mutually acceptable agreement for recommendation to the Town Council for proposed Town Council action within ninety days of such written request on how to amend the License to relieve Town or the Licensee from any commercial impracticability that arises from the condition in question. This provision shall not require that the License be amended, however it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.

13.4. Before adopting new Subscriber service standards that impose requirements that exceed, or address matters not addressed by, the standards set forth in this License or the Cable Code, the Town shall propose new Subscriber service standards and meet with the Licensee to discuss the specific areas of concern and negotiate a mutually acceptable resolution of such areas. If no resolution is reached, the Town shall provide Licensee with ninety days written notice of its intent to adopt proposed new Subscriber service standards.

13.5 If after the date hereof the Town issues or renews a cable or video services license with a similarly situated provider, that when taken as a whole, is more favorable or less burdensome than the terms of this License, Licensee shall have a right to request amendments to this License if necessary to modify provisions of this License that create a competitive or financial disadvantage to Licensee when compared to the other cable or video services license(s) granted by the Town.

14. Performance Deposit. As provided for in Section 14-2-4.2 of the Cable Code, the provisions of Section 14-7-1.1(2) of the Cable Code shall not be applicable to this License.

15. Notice. All notices required to be given under this License shall be in writing and shall be deemed served and effective when delivered to the designated persons listed below during ordinary business hours or on the date of delivery by U.S. mail registered or certified return receipt requested.

To the Licensee: CoxCom, Inc.  
1550 West Deer Valley Road  
Building C  
Phoenix, AZ 85027  
Attn: VP & Region Manager

With a copy (which is not notice)to: Cox Communications, Inc.  
1400 Lake Hearn Drive  
Atlanta, Georgia 30319  
Attn: Legal Department

To the Town: Town of Paradise Valley  
6401 East Lincoln Drive,  
Paradise Valley, AZ 85253  
Attn: Town Manager

With a copy (which is not notice) to: Town of Paradise Valley  
6401 East Lincoln Drive,  
Paradise Valley, AZ 85253  
Attn: Town Attorney

16. Force Majeure. With respect to any provision of this License the violation of which or noncompliance with which could result in the imposition of a financial penalty, forfeiture, or other sanction upon Licensee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, terrorism, strike or

other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by Licensee and are beyond its reasonable control.

17. Severability. If any provision of this License or any ordinance, regulation, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be (a) confined in its operation to the provision directly involved in the controversy in which such holding shall have been rendered, (b) shall not in any way affect the validity of any other provision hereof, and (c) the parties shall in good faith renegotiate the affected provision.

IN WITNESS WHEREOF, the parties have executed this License as of the day and year first written above to be effective as set forth herein.

APPROVED AS TO FORM:

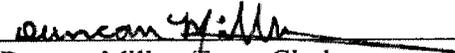
TOWN OF PARADISE VALLEY, ARIZONA

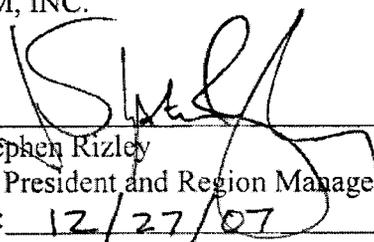
  
By: STEVEN ZRBACK, DEPUTY ATTORNEY  
FOR Andrew Miller, Town Attorney

By:   
Ed Winkler, Mayor  
Date: 12/20/07

ATTEST:

COXCOM, INC.

  
Duncan Miller, Town Clerk

By:   
J. Stephen Rizley  
Vice President and Region Manager - Arizona  
Date: 12/27/07

**CABLE TELEVISION LICENSE AGREEMENT**

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## CABLE TELEVISION SYSTEM LICENSE AGREEMENT

This Agreement is entered into by and between the Town of Paradise Valley, hereinafter referred to as "Town," and U S WEST Broadband Services, Inc., a Delaware corporation, hereinafter referred to as the "Licensee," a wholly owned subsidiary of U S WEST, Inc. The Town and Licensee are sometimes referred to collectively herein as the "parties."

### RECITALS

(A) Pursuant to Arizona law, local ordinance, the Federal Cable Communications Policy Act of 1984 (the "1984 Cable Act"), the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Act" or the "1992 Cable Act") and the Telecommunications Act of 1996 (the "1996 Act" or the "1996 Telecommunications Act"), Town is authorized to grant or renew licenses to construct, operate and maintain cable systems, utilizing public rights-of-way and properties within the Town's jurisdiction.

(B) Licensee desires to construct, operate and maintain a cable system within Town's jurisdiction, in accordance with applicable law and the provisions hereof.

(C) While grant of a cable license to Licensee is found to be in the interest of the welfare of the inhabitants of the Town, it is also in the best interests of the Town and its inhabitants that such grant be limited and regulated according to the terms hereof and of applicable law.

In consideration of the mutual consideration and promises hereinafter set forth, Town and Licensee agree as follows:

### SECTION 1. DEFINITIONS AND EXHIBITS

#### (A) DEFINITIONS

For the purposes of this Agreement and all exhibits attached hereto the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

The headings, titles and catchlines of the several sections of this Agreement are intended for reference or to indicate the contents of the sections, and shall not be taken as part of the substantive agreement or the sections to which they refer.

1.1 "Access" or "PEG Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the Town and its designees, of the Cable System to acquire, create, receive, and/or distribute video, cable service,

and/or other services and signals as permitted under applicable law, including, but not limited to:

a. "Public Access" means access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. "Educational Access" means access where Schools are the primary users having editorial control over programming and services.

c. "Government Access" means access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

1.2 "Access Channel" means any Channel, or portion thereof, designated for Access purposes pursuant to this Agreement.

1.3 "Access Capital Cost(s)" means any cost or expense of any kind incurred in connection with Licensee's purchase of equipment or expenditure of funds in support of Access Channels or programming, if and to the extent that such purchase or expenditure would be considered a capital expenditure under generally accepted accounting principals applied on a consistent basis.

1.4 "Affiliated Entity" or "Affiliate" when used in connection with Licensee means any corporation, person who owns or controls, is owned or controlled by, or is under common ownership or control with, Licensee and its successor corporations.

1.5 "Agreement" or "License Agreement" means the document in which this definition appears, i.e., the contractual agreement, executed between Town and Licensee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.6 "Basic Service" means any Cable Service tier that includes, at a minimum, the retransmission of local television Broadcast Signals, and local Access programming.

1.7 "Broadband Network Unit" or "BNU" means an electronic device that provides voice, video or data services over twisted copper pairs. The BNU is fed via fiber optic cables and used in FTTC (as such term is defined below) plant distribution.

1.8 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.

1.9 "Cable Act" means Title VI of the Communications Act of 1934, as amended (47 U.S.C. 151 *et seq.*).

1.10 "Cable Operator" means any person or groups of persons, including Licensee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.11 "Cable Plant" means cable, material, hardware and electronics used in the provision of Cable Service on the Cable System between the headend and Licensee's DSLAM (as defined below) cabinet or BNU, as the case may be.

1.12 "Cable Service(s)" means the one-way transmission to Subscribers of video programming or other programming service that a cable operator makes available to all Subscribers generally, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. To the extent consistent with applicable law, "Cable Services" shall include interactive services such as, but not limited to, information services, enhanced services, and access to the Internet made available to Subscribers by a Cable Operator through the Cable System.

1.13 "Cable Service Loop" means Licensee's twisted pair or coaxial cable used to supply Cable Service from the DSLAM cabinet or BNU.

1.14 "Cable System" means a Facilities, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a Facilities that serves only to retransmit the television signals of one or more television broadcast stations; (B) a Facilities that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act of 1934, as amended (47 U.S.C. §201 et seq.), except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Communications Act of 1934, as amended (47 U.S.C. §541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services; (D) an open video system that complies with Section 653 of the Communications Act of 1934, as amended (47 U.S.C. §573); or (E) any Facilities of any electric utility used solely for operating its electric utility systems.

1.15 "Channel" means a digitally encoded programming stream of content from a network or program provider.

1.16 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

1.17 "Connection" with regard to connections to public buildings, means installation of Fiber Optic or coaxial cable or other Cable System-related facility through the outer wall of the building leaving adequate excess Facilities to permit further connection to other facilities, plant or cable within the building.

1.18 "Closed Channel" means an upstream or downstream Channel that is not available for Residential Subscribers.

1.19 "Digital Subscriber Line Access Multiplexer" or "DSLAM" means an electronic device that provides voice, video or data service over twisted copper pairs. The DSLAM is fed via Fiber Optic cables and used in FTTN (as defined below) plant distribution.

1.20 "Downstream Channel" means a Channel capable of carrying a transmission from the headend to remote points on the Cable System or to interconnection points on the Cable System.

1.21 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

1.22 "Facility" means any tangible component of the Cable System.

1.23 "FCC" means the Federal Communications Commission.

1.24 "Fiber to the Curb" or "FTTC" means an outside plant distribution cabling concept employing both Fiber Optic and copper cables to provide broadband services to new developments.

1.25 "Fiber to the Node" or "FTTN" means an outside plant distribution cabling concept employing both Fiber Optic and cables to provide broadband services to existing developments.

1.26 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying cable service by means of electric lightwave impulses.

1.27 "Gross Revenues" means all amounts received by the Licensee from the operation of Licensee's Cable System to provide Cable Services within the franchise area. Gross Revenues shall include, without limitation, all amounts for all Cable Services, including premium and pay-per-view services, and all other revenues received or accrued by Licensee from the operation of Licensee's Cable System to provide cable service within the franchise area, including advertising

and installation of cable connections. "Gross Revenues" shall also include any revenue received by any affiliate of the Licensee where such revenue in the ordinary course of Licensee's business practices should have been paid to Licensee in connection with the operation of its Cable System within the License Area. Gross Revenues shall not include bad debt, sales taxes, or other similar taxes or fees, which are collected for direct pass-through to local, State, or Federal government.

1.28 "Headend" or "Hub" means any Facilities for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for television Broadcast Signals, equipment for the interconnection of the cable system with adjacent cable systems and interconnection of any separate networks which are part of the cable system, and all other related equipment and facilities.

1.29 "Interconnect" or "Interconnection" means the provision by Licensee of technical, engineering, physical, financial, and all other necessary components to accomplish, complete, and adequately maintain a physical linking of Licensee's Cable System and Cable Services or any designated Channel or signal pathway thereof, so that Cable Services of technically adequate quality may be sent to and received from other systems, in accordance with this Agreement.

1.30 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming for a fee or charge by persons other than the Licensee and designated by Licensee for Leased Access use pursuant to Section 612 of the Communications Act of 1934, as amended, 47 U.S.C. §532.

1.31 "License" means the non-exclusive and revocable initial authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a lease, franchise, permit, license, resolution, contract, certificate, agreement, ordinance, or otherwise, and subject to all limitations and restrictions contained herein.

1.32 "License Area" means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Agreement.

1.33 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming for a fee or charge by persons other than the Licensee and designated by Licensee for Leased Access use pursuant to Section 612 of the Communications Act of 1934, as amended, 47 U.S.C. §532.

1.34 "License Fee" means any fee or assessment of any kind imposed by a franchising authority or other governmental entity on Licensee or a cable Subscriber, or both, solely because of their status as such. The term "License Fee" does not include:

- a. Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers);
- b. Access Capital Costs which are required under this Agreement to be incurred by Licensee for Public, Educational, or Governmental Access Facilities;
- c. Requirements or charges incidental to the awarding or enforcing of the franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- d. Any fee imposed under Title 17, United States Code;
- e. Permit and inspector fees, and
- f. Penalties for faulty construction or compensation for damages.

1.35 "Licensee" means U S WEST Broadband Services, Inc. and its lawful successor, transferee or assignee.

1.36 "Node" means a transmission signal distribution location or facility, or a branching or exchange point.

1.37 "Other Services" means lawful communications services provided over the Cable System other than Cable Services, none of which services shall be subject to any tax, fee or other form of regulation under the provisions of this Agreement unless otherwise allowed by law.

1.38 "Parent Corporation(s)" means any corporations with fifty percent or greater ownership of Licensee or with control over Licensee.

1.39 "Person" means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization.

1.40 "Record" means written or graphic materials, however produced or reproduced, or any other tangible record to the extent related to the enforcement or administration of this Agreement.

1.41 "Residential Services" means Cable Services delivered to single or multiple residential Dwelling Units, excluding multiple Dwelling Units billed on a bulk billing basis, and services delivered to commercial, institutional or governmental users.

1.42 "Residential Subscriber" means any Subscriber receiving Residential Services.

1.43 "Standard Drop" means that there is a U S WEST Communications, Inc. telephone line installed to the Subscriber's residence. A Standard Drop includes only one outlet and does not include placement of wires, cables, or electronics in the interior space of a wall. A Standard Drop shall exclude custom installation work, including asphalt construction, concrete jacking, and specific Subscriber requested work.

1.44 "Standard Commercial Drop" means that there is a U S WEST Communications, Inc. telephone line installed to the Subscriber's business, which line is not connected to a Centrex, PBX or key telephone system. A Standard Commercial Drop includes only one outlet and does not include placement of wires, cables or electronics in the interior space between walls. A Standard Commercial Drop shall exclude custom installation work, including asphalt construction, concrete jacking, and specific Subscriber requested work or cable rerouting.

1.45 "School" means any accredited educational institution, public or independent, including primary and secondary schools, and community colleges (excluding living facilities.)

1.46 "Section" means any section, subsection or provision of this Agreement, and references to the section(s) shall include each and every subsection(s), and vice versa.

1.47 "Serving Area Interface" or "SAI" means the cross connect point used by telephone companies to supply telephone service to a neighborhood or distribution area.

1.48 "State" means the State of Arizona.

1.49 "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Streets, franchise area: roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Town shall permit to be included within the definition of Street from time to time.

1.50 "Subscriber" means any person who or which elects to subscribe to, for any purpose, a cable service provided by the Licensee by means of or in connection with the Cable System and whose premises are physically wired and lawfully activated to receive Cable Services from the Licensee's Cable System.

1.51 "Town" is the Town of Paradise Valley, Arizona (a municipal corporation or statutory municipality,) and all of the territory within its (corporate) boundaries, as such may change from time to time.

1.52 "Universal Service" means the availability of Cable Service to all Residential Subscribers in the franchise area, in accordance with the provisions of this Agreement.

1.53 "Upgrade" means an improvement in Channel capacity or other technical aspect of Cable System capacity, which may be accomplished with or without a rebuild of the Cable System.

1.54 "Upstream Channel" means a Channel capable of carrying a transmission to the headend from remote points on the Cable System.

1.55 "Year" "Annual" or "Annually" means the period consisting of a full calendar Year, beginning January 1 and ending December 31 unless otherwise provided in this Agreement.

#### **(B) EXHIBITS**

In addition to all applicable laws, regulations, rules, resolutions and ordinances, the following numbered documents, which are occasionally referred to in this Agreement or each other, are formally incorporated and made a part of this Agreement by this reference:

1) *Exhibit A*, entitled *Construction Schedule*, a document that sets forth the projected schedule for the construction of the Licensee's Facilities throughout the License Area denoting the limits of construction. Exhibit A is Licensee's preliminary estimate of the construction, and is subject to change as actual construction proceeds. Licensee will notify the Town of such changes.

2) *Exhibit B*, entitled *Public Buildings*, a list of the public buildings within the License Area, which, public buildings, upon request of Town, must be connected to the Cable System by Licensee in accordance with this Agreement, and other provisions of this Agreement. New public buildings may be added to this list following construction or purchase in accordance with this Agreement.

3) *Exhibit C*, entitled *Form of Security*, which sets forth the form and terms of the security, required in the various security provisions of this Agreement and its Exhibits, including Section 5.3 of this Agreement.

4) *Exhibit D*, entitled *Description of License Area*, which sets forth the area within which the Licensee is authorized to provide Cable Services under this Agreement including any future annexations.

In the event of conflict or ambiguity between this Agreement and the above-referenced documents (the "Exhibits"), and any other agreement between Town and Licensee, this Agreement, together with the Exhibits, shall govern and prevail.

## **SECTION 2. GRANT OF LICENSE**

### **2.1 Grant**

(A) Town hereby grants to Licensee a nonexclusive and revocable authorization to make reasonable and lawful use of the public Streets and public easements within the License Area to construct, operate, maintain, reconstruct, rebuild and upgrade a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Agreement and in any prior utility or general utility use agreements entered into with regard to any individual property. This Agreement shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Agreement.

(B) This Agreement is subject to the general police power of Town. Nothing in this Agreement shall be deemed to waive the requirements of the other codes, resolutions and ordinances of general applicability enacted, or hereafter enacted, by the Town.

### **2.2 Use of Public Streets and Ways**

Subject to the Town's supervision and control, Licensee may erect, install, construct, repair, replace, reconstruct, and retain in, on, under, across, and along the Streets within the License Area such wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the License Area. Licensee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter, including those referred to in Section 12.1. Licensee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using the Streets within the License Area in compliance with all applicable Town construction codes and procedures. As trustee for the public, the Town is entitled to fair compensation to be paid for these valuable rights throughout the term of the Agreement.

### **2.3 Duration**

The term of this Agreement and all rights, privileges, obligations and restrictions pertaining thereto shall be fifteen (15) years from the effective date of this Agreement, unless terminated sooner as hereinafter provided.

## **2.4 Effective Date**

The effective date of this License shall be April 13, 2000 or thirty (30) days after adoption of this Agreement by the Town.

## **2.5 License Nonexclusive**

This License shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the Town or its predecessors to any person to use any property, right-of-way, easement, right, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed Licensee hereunder. The Town may at any time grant authorization to use the Streets for any purpose not incompatible with Licensee's authority under this Agreement and for such additional licenses for cable systems, as Town deems appropriate.

## **2.6 Police Powers**

Licensee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Licensee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by the Town or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

Town reserves the right to exercise its police powers, notwithstanding anything in this Agreement to the contrary and any conflict between the provisions of this Agreement and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

## **2.7 License Area**

Licensee shall provide Cable Services, as authorized under this Agreement, within the License Area, as limited by and in accordance with the provisions of this Agreement.

## **SECTION 3: LICENSE FEE AND FINANCIAL CONTROLS**

### **3.1 License Fee**

(A) As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use the Town's Streets, Licensee shall pay as a License Fee to the Town, throughout the duration of this Agreement, an amount equal to five (5%) percent of Licensee's Annual Gross Revenues as defined in Paradise Valley Town Code Section 14-1-3(2). Accrual of such License Fee shall commence as of the effective date of this Agreement.

Licensee shall not be required to pay to Town fees and taxes on revenues from a particular service that is unduly discriminatory when compared to those paid by the providers of the same services.

(B) If, in the future, applicable law permits the Town to receive a greater License Fee that five (5%) percent of Gross Revenues, the Town shall have the unilateral right to increase the License Fee by ordinance approved by Town Council.

### **3.2 Payments**

Licensee's fee payments to Town shall be due to the Town for the preceding calendar quarter no later than August 1, November 1, February 1, and May 1. Licensee must file with the Town not later than the date the License Fee is due, a certified statement by an officer of Licensee showing Gross Revenues received by Licensee during the preceding quarter.

### **3.3 Acceptance of Payment and Re-Computation**

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of the Licensee.

### **3.4 Quarterly License Fee Reports**

Each payment shall be accompanied by a written report to the Town, verified by an authorized representative of Licensee, containing an accurate statement in summarized form, as well as in detail, of Licensee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System and shall be drafted in accordance with Generally Accepted Accounting Principles.

### **3.5 Annual License Fee Reports**

Licensee shall, within sixty (60) days after the end of each calendar Year, furnish to the Town a statement stating the total amount of gross receipts, Gross Revenues, and all License Fee calculations and payments, deductions and computations for the period covered by the payment. Such statement shall, prior to submission to the Town, be audited by a certified public accountant that may also be the chief financial officer or controller of Licensee.

### **3.6 Audits**

On an Annual basis, upon ten (10) days prior written notice, the Town shall have the right to conduct an independent audit of Licensee's Records reasonably related to the administration or

enforcement of this Agreement, in accordance with Generally Accepted Accounting Principles. If the audit shows that License Fees have been underpaid by ten (10%) percent or more, Licensee shall pay the total cost of the audit.

### **3.7 Interest on Delinquent License Fees**

Any License Fee payments which remain unpaid after the dates specified in Section 14-5-2 of the Paradise Valley Town Code shall be delinquent and shall thereafter accrue interest at the rate of ten (10%) percent per annum from the due date until paid in full.

### **3.8 Alternative License Compensation**

In the event the obligation of Licensee to compensate the Town through License Fees is lawfully suspended or eliminated, in whole or part, then the Licensee shall pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of Town's Streets for Licensee's use of Town's Streets, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Licensee's Annual Gross Revenues.

### **3.9 Costs of Publication**

Licensee shall pay the reasonable cost of publication of this Agreement and any amendments thereto, as the Town or applicable law reasonably requires such publication.

### **3.10 Tax Liability**

Payment of the License Fee under this Agreement shall not exempt Licensee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Licensee that may be imposed by the Town and shall not exempt Licensee from the payment of penalties, compensation for damages or other compensation to the Town for service provided by the Town, except as may otherwise be provided in ordinances, or other laws imposing such other license fee, tax, charge, penalties, or compensation. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Licensee solely because of its status as a cable operator as defined herein.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

The Town shall be vested with the power and right to regulate reasonably the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under State and local law, to any agent, in its sole discretion

## 4.2 Rates and Charges

All Licensee rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable Federal, State and local laws. All Licensee rates and charges shall be published in a form made available to the public and non-discriminatory without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location in Licensee's License Area. Licensee shall apply its rates in accordance with governing law. Subject to applicable provisions of Federal law, and except as set forth below, Licensee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Licensee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by the Licensee. Licensee shall also have the right to discontinue service to any Subscriber who has refused to allow Licensee to correct, or has refused to pay Licensee's established service charges for the correction of, any Subscriber-accomplished in-home connection that results in signal leakage, harmful interference, injury to system integrity or other, similar adverse condition. Nothing in this Section shall be construed to permit any Subscriber-accomplished in-home connection that has the purpose or effect of permitting theft of service or the avoidance of any lawful charge for the provision of Cable Service or other service. Nothing in this Agreement shall be construed to prohibit:

- (1) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
- (2) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
- (3) The offering of rate discounts for either Cable Service generally, or data transmission to governmental agencies, or educational institutions;
- (4) The establishment or reduction of rates to meet competition;
- (5) The establishment of discretionary or non-uniform rates in areas where effective competition is present under applicable Federal laws; or
- (6) The establishment of any form of rate for any service other than a Cable Service that is lawfully subject to rate regulation under Federal law.

#### **4.3 Filing of Rates and Charges**

(A) Throughout the term of this Agreement, Licensee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Agreement that are subject to regulation under Federal law. Nothing in this subsection shall be construed to require the Licensee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Licensee shall provide, upon request, a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such channels, provided by Licensee. The schedule shall include a description of the price, terms and conditions established by Licensee for Leased Access Channels.

#### **4.4 Reserved Authority**

The Town reserves all regulatory authority arising from the 1984 Cable Act, the 1992 Cable Act and the 1996 Telecommunications Act, and any amendments or superseding statutes thereto, and any other relevant provisions of Federal, State or local law.

#### **4.5 Force Majeure**

In the event that Licensee is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the reasonable control of Licensee such as acts of God, floods, fires, hurricanes, tornadoes, earthquakes or other unavoidable casualty, acts of public enemy, insurrection, war, riot, sabotage, vandalism, strikes, epidemic, or unusually severe weather conditions, or shortages of materials or qualified labor which are not reasonably foreseeable, Licensee shall have a reasonable time, under the circumstances to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the Town. The same force majeure exception shall apply to Town with regard to any of its obligations under this Agreement.

#### **4.6 General Performance Evaluation**

(A) The Town may conduct performance evaluation sessions within thirty (30) days of the biennial anniversary dates of the effective date of this Agreement. The Town shall conduct all such evaluation sessions for the purpose of discussing such topics as, but not limited to, service rate structures, license fees, liquidated damages, free or discounted services; application of new technologies, Cable System performance, Cable Services provided, video programming offered, customer complaints, privacy, amendments to this Agreement, judicial and FCC rulings, line extension policies, and Town or Licensee's rules. Nothing in this subsection shall be construed as requiring the re-negotiation of this Agreement.

(B) The Town may hold special evaluation sessions at any time during the term of this Agreement.

(C) All regular evaluation sessions may be open to the public and announced at least two weeks in advance in a newspaper of general circulation in the License Area. Licensee shall notify its Subscribers of all regular evaluation sessions by announcement on at least one Channel of its system between the hours of 7:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session. Licensee shall also include in its billing or on the Subscriber's bill notice to Subscribers for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the Town.

(D) During evaluations under this Section, Licensee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the evaluation.

## **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

### **5.1 Indemnification**

(A) General Indemnification. Licensee shall indemnify, defend and hold the Town, its officers, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, and defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Agreement, by or for Licensee, its agents, or its employees, or by reason of any neglect or omission of Licensee. Licensee shall consult and cooperate with the Town while conducting its defense of the Town.

(B) Indemnification for Relocation. Licensee shall indemnify the Town for any damages, claims, additional costs or expenses assessed against, or payable by, the Town arising out of, or resulting, directly or indirectly, from, Licensee's failure to remove, adjust or relocate any of its facilities in the Streets in a timely manner in accordance with any relocation obligation Licensee may have.

(C) Additional Circumstances. Licensee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses in any way arising out of:

1) The lawful actions of the Town in granting this Agreement to the extent such actions are consistent with this Agreement and applicable law;

2) Any failure by the Licensee to secure consents from the owners, authorized distributors or licensees/licensors of programs to be delivered by the Cable system, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement.

(D) Procedures and Defense. If a claim or action arises, the Town or any other indemnified party shall tender the defense of the claim to the Licensee. The Town may participate in the defense of a claim at Licensee's expense and, in any event, the Licensee may not agree to any settlement of claims affecting Town without the Town's approval.

(E) Non-waiver. The fact that Licensee carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of or defense to Licensee's duty of defense and indemnification under this Section.

## 5.2 Insurance

(A) Licensee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance.

(1) Commercial General Liability insurance will be four million dollars (\$4,000,000) umbrella liability coverage in excess of underlying coverage s required by the Town Code. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, death, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision. All rules governing Worker's Compensation as required by the State of Arizona will be complied with.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and three million dollars (\$3,000,000.00) aggregate with respect to each of Licensee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the Town. The policy shall contain a severability of interests provision.

(B) Workers Compensation insurance to cover obligations imposed by Federal and State statues having jurisdiction of Licensee's employee engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than five hundred thousand dollars (\$500,000) for each accident, five hundred thousand dollars (\$500,000) disease for each employee and one million dollars (\$1,000,000) disease policy limit.

(C) The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the Town and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

(D) The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the Town. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Agreement, Licensee shall provide a replacement policy. Licensee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Agreement.

(E) Licensee shall maintain on file with the Town a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the Town as to the adequacy of the certificate. Willful failure to maintain adequate insurance as required under this Section shall be cause for immediate termination of this Agreement by the Town.

(F) In the alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, Licensee's self-insurance shall provide the same amount and level of protection for the Licensee and the Town, its officers, agents, and employees as otherwise required under this Section. The adequacy of the self-insurance shall be subject to the periodic review and approval of the Town. If Licensee elects to provide self-insurance under this Section, any failure to maintain adequate self-insurance shall be cause for immediate termination of this Agreement by the Town.

### **5.3 Letter of Credit**

No later than the effective date of this Agreement, Licensee shall establish and provide to the Town, as security for the faithful performance by Licensee of all provisions of this Agreement and shall maintain in full effect at all times thereafter until the filing of a Final Order of Completion pursuant to Section 14-3-7 of the Town Code a letter of credit in the amount of two hundred fifty thousand dollars (\$250,000).

(A) The letter of credit shall be reduced to twenty five thousand dollars (\$25,000) following the issuance of a Final Order of Completion and shall be maintained at that amount for the term of the Agreement.

(B) The letter of credit may be assessed by Town, in accordance with Section 15 of this Agreement, or under the Customer Service Standards, for the following purposes:

(1) Failure of Licensee to pay Town sums due under the terms of this Agreement.

(2) Reimbursement of costs borne by the Town to correct Agreement violations not corrected by Licensee, and

(3) Monetary remedies, penalties, or damages assessed against Licensee under the terms of this due to material default or breach of Agreement requirements.

(C) Licensee shall have the right to appeal to the governing legislative body of the Town for reimbursement in the event Licensee believes the letter of credit was drawn upon improperly. Licensee shall not be deemed to have waived any legal or equitable remedy if the letter of credit has not been properly drawn upon in accordance with this Agreement. Any funds the Town erroneously or wrongfully withdraws from the letter of credit shall be returned to Licensee with interest from the date of withdrawal at a rate equal to the prime rate of interest as quoted by the Bank of New York within thirty (30) business days of a final determination that the withdrawal was in error or wrongful.

(D) Prior to drawing on the letter of credit, Town shall provide Licensee with at least thirty (30) days prior written notice specifying the amount Town proposes to withdraw and the reason for such withdrawal. If Licensee fails within thirty (30) days after the date of such written notice to pay to the Town any License Fee, assessment, fees, taxes or other sums lawfully due and unpaid which the Town determines can be remedied by a draw upon the letter of credit, the Town may thereafter withdraw the amount thereof from the letter of credit. Upon such withdrawal, the Town shall notify the Licensee of the amount and date thereof.

(E) The letter of credit deposited pursuant to this Section and its accrued interest shall become the property of the Town in the event that the License is lawfully terminated or revoked for cause by reason of the default or material breach of the Licensee, and Licensee has exhausted all of its remedies relating thereto. The Licensee, however, shall be entitled to the return of the letter of credit deposited in accordance with this Section 5, or any portion thereof remaining upon normal expiration of this License, or upon termination other than for breach of a material provision by the Licensee.

(F) The rights reserved to the Town with respect to the letter of credit are in addition to all other rights of the Town whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall constitute a waiver of any other right the Town may have.

(G) Town shall give Licensee written notice of any withdrawal under this section upon such withdrawal. Within seven (7) days following receipt by Licensee of written notice from the Town that any amount has been withdrawn from the letter of credit, and unless Licensee is contesting or intends to contest the withdrawal under Subsection (D) of this Section 5, Licensee

shall restore such letter of credit to the amount required under this Agreement. Failure by Licensee to so restore the letter of credit shall be considered a material breach of this Agreement.

With respect to a withdrawal being contested by Licensee under Subsection (D) of this Section 5, Licensee shall restore to the letter of credit within seven (7) days the amount of such withdrawal, or any part thereof, following a final determination that the amount of the withdrawal, or any part thereof, has been lawfully and properly withdrawn by the Town.

(H) Town shall have the right to review whether this amount should be increased to reflect increases in the Phoenix Metropolitan area Consumer Price Index during the prior three (3) year period.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

The Licensee shall comply with any applicable Customer Service Standards, and shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Federal, State, or local law.

### **6.2 Subscriber Contracts**

Licensee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Agreement, or any Exhibit hereto, or the requirements of applicable Customer Service Standards.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Licensee Records**

Subject to applicable provisions of Federal law regarding Subscriber privacy, the Town shall have access to, and the right to inspect, any books and records of Licensee, its parent companies and affiliated entities that are reasonably related to the administration or enforcement of the terms of this Agreement. Licensee shall not deny Town access to any of Licensee's Records on the basis that Licensee's Records are under the control of any parent company, affiliated entity or a third party. The Town may, in writing, request copies of any such records or books and Licensee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other Section shall be furnished to the Town at the sole expense of Licensee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Licensee may request, in writing within ten (10) days, that the Town inspect them at Licensee's local offices. If any books or Records of the Licensee are not kept in a local metro office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an

examination of such Records is necessary or appropriate to the performance of any of Town's duties, administration or enforcement of this Agreement, then all reasonable travel and maintenance expense(s) incurred in making such examination shall be paid by Licensee.

## **7.2 Confidentiality**

Town agrees to treat as confidential any books and/or records that constitute proprietary, privileged or confidential information, to the extent Licensee makes Town aware of such confidentiality. Licensee shall be responsible for clearly and conspicuously stamping the work "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential. If Town believes it must release any such confidential books and records in the course of enforcing this Agreement, or for any other reason, it shall advise Licensee in advance so that Licensee may take appropriate steps to protect its interests. If the Town receives a demand from any person for disclosure of any information designated by Licensee as confidential, the Town shall, so far as consistent with applicable law, advise the Licensee and provide Licensee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Licensee's books and Records marked confidential as set forth above to any person.

## **7.3 Records Required**

(A) Licensee shall at all times maintain in the local metropolitan area:

- (1) A full and complete set of plans and records and maps showing the location of all Cable System equipment installed or in use in the License Area, exclusive of electronics, Subscriber service drops and equipment provided in Subscriber's home;
- (2) A copy of FCC filings on behalf of Licensee, its parent companies or affiliates which relate to the operation of the Cable System;
- (3) All Subscriber Records and information;
- (4) A summary of the prior Year's activities, including services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed;
- (5) A list of company services, rates and Channel line-ups;
- (6) A statistical compilation of customer or Subscriber complaints, action taken and resolution, if any, and a log of service calls.

(B) Subject to Section 7.2, all information furnished to the Town is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

#### **7.4 Annual Reports**

Within sixty (60) days after the close of Licensee's fiscal Year, the Licensee shall submit to the Town a written Annual report, in a form acceptable to the Town, which shall include, but not necessarily be limited to, the following information for the License Area:

- (A) A revenue statement certified by an authorized representative of Licensee;
- (B) A summary of the previous year's activities in development of the Cable System, including, but not limited to, services begun or discontinued during the reporting Year, and the number of Subscribers for each class of service (*i.e.*, basic, expanded basic, or premium);
- (C) A statement of planned construction, if any, for the next two (2) years;
- (D) A list of Licensee's officers, members of its boards of directors, and other principals of the Licensee; and
- (E) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Licensee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose Annual reports are publicly available, in which case a copy of the Annual report shall be submitted.

#### **7.5 Copies of Federal and State Reports**

Upon a request by the Town, Licensee shall submit to the Town copies of all public, non-confidential pleadings, applications, notifications, communications and documents of any kind, submitted by Licensee or its parent corporation(s), to any Federal, State or local courts, regulatory agencies and other government bodies if such documents specifically relate to the operations of Licensee's Cable System within the License Area. Licensee shall submit such documents to the Town no later than thirty (30) days after Town's request. With respect to other public, non-confidential reports, documents, and notifications provided to any Federal, State, or local regulatory agency as a routine matter in the due course of operating Licensee's Cable System within the License Area, Licensee shall also make such documents available to Town upon Town's request.

#### **7.6 Complaint File and Reports**

- (A) Licensee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and

the Licensee's actions in response to those complaints. Aggregate data regarding Subscriber signal quality and service interruption complaints shall remain open to the Town during normal business hours. Licensee shall provide the Town an executive summary, upon request, which shall include aggregate information concerning customer complaints.

(B) A summary of service requests, identifying the number and nature of the requests and their disposition, shall be completed and submitted to the Town upon request.

(C) A log of all service interruptions shall be maintained and provided to Town, upon request.

#### **7.7 Inspection of Facilities**

The Town may inspect any of Licensee's facilities and equipment at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice.

#### **7.8 Failure to Report**

The failure or neglect of Licensee to file any of the reports or filings required under this Agreement, or such other reports as the Town may reasonably request, may, at the Town's option, be deemed a material breach of this Agreement.

#### **7.9 False Statements**

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a material breach of this Agreement and may subject Licensee to all remedies, legal or equitable, which are available to the Town under this Agreement or otherwise.

### **SECTION 8: PROGRAMMING AND CHANNEL CAPACITY**

#### **8.1 Licensee Compliance**

Licensee shall meet or exceed the programming and Channel delivery requirements set forth in this License, and in all applicable Federal, State or local statutes, regulations or standards.

#### **8.2 Broad Programming Categories**

Licensee shall provide those broad categories of programming that Licensee determines are responsive to the needs and desires of Licensee's Subscribers. Examples of broad categories of programming Licensee may elect to provide included the following:

- (A) Educational programming;
- (B) News & Information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts; culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) Weather information;
- (J) Programming addressed to diverse ethnic and minority interests in the License Area;
- (K) National, State, and local government affairs.

### **8.3 Obscenity**

Licensee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control any programming which is obscene under, or violates any provision of, applicable law relating to obscenity, and is not protected by the Constitution of the United States. Licensee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of the Licensee's officers or employees have permitted programming which is obscene under, or in violation of, any provision of applicable law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Licensee's editorial control. Licensee shall comply with all relevant provisions of Federal law relating to obscenity.

### **8.4 Parental Control Device**

Upon request by any Subscriber, Licensee shall make available a parental control or lockout device, traps and/or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Licensee shall inform its Subscribers of the availability of

the lockout device at the time of their initial subscription and periodically thereafter, in accordance with the FCC customer service standards. Any device offered shall be at Licensee's cost plus installation charge.

#### **8.5 Leased Access Channels**

Licensee shall meet the Leased Access Channel requirements imposed by Federal law.

#### **8.6 Broadcast Channels**

To the extent required by Federal law, Licensee shall provide to all Residential Subscribers the signals of:

- (A) Local commercial television stations and qualified low power stations; and
- (B) Qualified local noncommercial educational television stations.

#### **8.7 Continuity of Service**

(A) It shall be the right of all Subscribers to continue to receive service from the Licensee insofar as their financial and other obligations to Licensee are honored. Subject to the force majeure provisions of Section 4.5 of this Agreement, Licensee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new operator acquires the system in accordance with this Agreement, Licensee shall cooperate with the Town and new Agreement holder or operator in maintaining continuity of service to all Subscribers. During any transition period, Licensee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(C) Subject to the force majeure provision in this Agreement, in the event Licensee fails to operate the Cable System for seven (7) consecutive days without prior approval of the Town, the Town may, at its option, operate the Cable System itself or designate an operator until such time as the Licensee restores service under conditions acceptable to the Town or a permanent operator is selected. If the Town is required to fulfill this obligation to provide continuous service for Licensee, Licensee shall reimburse the Town for all reasonable costs that result from Licensee's failure to perform.

## SECTION 9: PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS

### 9.1 Designated Access Providers

(A) The Town may designate Access providers to control and manage the use of any and all Access facilities provided by the Licensee under this Agreement, including, without limitation, the operation of interconnected Access Channels. To the extent of such designation by the Town, as between the designated Access provider and the Licensee, the designated Access provider shall have sole and exclusive responsibility for operating and managing such Access facilities.

(B) Licensee shall cooperate with the Town in Town's efforts to provide Access programming.

### 9.2 Channel Capacity and Use

(A) Downstream Channels. Upon completion of the system, Licensee shall provide one (1) downstream Channel for distribution of Government Access programming.

(B) Unused PEG Channels. Licensee shall have the right to program any Channel which is allocated under this Section for PEG use and which is not being programmed with PEG Access programming. Should Town wish to program such Channel with Access programming, Town shall give Licensee a minimum of sixty (60) days prior written notice stating a future date certain at least three months after the date of such notice as of which Town or its designee intends to fully utilize such Channel for Access programming. Upon receipt of such notice, Licensee shall make the Channel available for Access use either on the specified future date certain or on the date three months after the date of receipt of Town's notice, whichever is later. Licensee shall also have the right temporarily to recapture and use any Channel, or portion thereof, which is allocated under this Section for public, educational, or governmental use, effective thirty (30) days after a written request for such recapture and use is submitted to the Town, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if it is being programmed with Access programming an average of more than twelve total hours per day, and if unduplicated Access programming is delivered over it more than an average of 28 hours per week, as measured over the three-month period preceding Licensee's recapture request. Character-generated programming shall be counted towards the total average hours and non-duplicated average hours only with respect to one Channel Access Channel. If a Channel allocated for public, educational, or governmental use, or portion thereof, is used by Licensee in accordance with the terms of this subsection, the Town shall have the right to require the return of the Channel or portion thereof by delivering not less than sixty (60) days prior written notice to Licensee stating that the Town or other applicable institution is prepared to fully utilize the Channel, commencing on a specified date certain in the future, in accordance with this subsection. In such event, the Channel, or portion thereof, shall be made available for

Access use on the specified future date certain, or within three months after receipt by Licensee of such written notice, whichever is later.

### **9.3 Access Channel Assignments**

To the extent that it is legally, economically and technically feasible, Licensee will use its best efforts to institute common Channels for the public, educational, and governmental Channels provided pursuant to this Agreement, upon completion of the Cable System.

### **9.4 Relocation of Access Channels**

Licensee shall provide Town with a minimum of sixty (60) days notice, and use its best efforts to provide one hundred twenty (120) days notice, prior to the time PEG Access Channel designations are changed Licensee, at Licensee's expense, will place the Town's notices of the Channel change in its regular monthly billings, upon Town's request. Any such notices shall conform to the reasonable requirements of Licensee with respect to size, weight and timing of mailing.

### **9.5 Access Interconnections**

(A) The Town or its designated Access provider shall have the right to control and schedule the operation of all interconnected Access Channels. In addition, Town shall have the right to use, at its sole discretion and at no cost to Town, any Access Channels to be provided under this Agreement for Access interconnection.

(B) Licensee shall take all necessary technical steps to ensure that technically adequate signal quality and routing/switching systems are initially and continuously provided for all Access Interconnections between local jurisdictions throughout the duration of this Agreement. The cost for any equipment or maintenance dedicated to such Access Interconnections shall be shared on pro rata basis or as mutually agreed upon among all participating jurisdictions, and paid to Licensee.

### **9.6 Access Channels on Basic Service Tier**

All Access Channels provided to Subscribers under this Agreement shall be included by Licensee, without limitation, as a part of each and every Cable Service tier that provides basic service.

### **9.7 Change In Technology**

In the event Licensee makes any change in the Cable System and related equipment and facilities or in Licensee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access services or programming, Licensee shall at its own expense take necessary technical steps or provide necessary technical assistance, including

the acquisition of all necessary equipment, and full training of Town's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

#### **9.8 Technical Quality**

Licensee shall maintain all Access Channels and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Licensee shall provide routine maintenance and shall repair and replace all transmission equipment and associated cable and equipment required to carry signal quality to and from Licensee's facilities for the Access Channels provided under this Agreement.

#### **9.9 Access Cooperation**

Town and Licensee may agree to designate any other jurisdiction which has entered into an Agreement with Licensee or an affiliate of Licensee to receive any Access benefit due the Town hereunder, or to share in the use of Access services, facilities, equipment or Channel operations hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access Channels, facilities and equipment.

### **SECTION 10. GENERAL STREET USE AND CONSTRUCTION**

#### **10.1 Construction**

(A) Subject to applicable laws, regulations and ordinances of the Town and the provisions of this Agreement, Licensee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to Licensee's Cable System shall, regardless of who performs the construction, be and remain Licensee's responsibility. Licensee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities, within the Streets. Licensee shall pay all applicable fees upon issuance of the requisite construction permits by the Town to Licensee.

(B) Prior to beginning any construction, Licensee shall provide the Town with a construction schedule for work in the Streets.

(C) Licensee may make excavations in streets for any facilities needed for the maintenance or extension of Licensee's Cable System. Prior to doing such work, Licensee shall apply for, and obtain, appropriate permits from the Town, and give appropriate notices to Town and any local notification association. When obtaining a permit, the Licensee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible

and reasonably practicable to joint trench or share bores or cuts, Licensee shall work with other providers, licensees, permittees, and Licensees so as to reduce so far as possible the number of street cuts within the Town.

(D) In the event that emergency repairs are necessary, Licensee shall immediately notify the Town of the need for such repairs. Licensee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. Licensee shall comply with all applicable Town regulations relating to such excavations or construction, including the payment of permit or License Fees.

## **10.2 Location of Facilities**

Within forty-eight (48) hours after the Town bureau or any Town licensee or permittee notifies Licensee of a proposed Street excavation, the Licensee shall, at Licensee's expense:

(A) Mark on the surface all of its locatable underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocatable underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Licensee does not have any underground facilities in the vicinity of the proposed excavation.

## **10.3 Relocation**

The Town shall have the right to require Licensee to change the location of any of Licensee's Cable System within the Streets in the event of an emergency or when public need or convenience requires such change, and the expense thereof shall be paid by Licensee. Should Licensee fail to remove or relocate any such facilities by the date established by the Town, the Town may effect such removal or relocation, and the expense thereof shall be paid by Licensee, including all costs and expenses incurred by the Town due to Licensee's delay. If the Town requires Licensee to relocate its Facilities located within the Streets, the Town shall make an effort to provide Licensee with an alternate location within the Streets. If funds are generally made available to users of the public rights-of-way for such relocation, Licensee shall be entitled to its pro rata share of such funds. Despite any language to the contrary, and to the extent that Licensee shares facilities with telecommunications facilities, Licensee shall not be required to relocate its Facilities until such time that the shared telecommunications facilities are lawfully required to be relocated.

## **10.4 Restoration of Streets**

(A) Whenever Licensee disturbs the surface of any street for any propose, Licensee

shall promptly restore the Street to at least its prior condition. When any opening is made by Licensee in a hard surface pavement in any street, Licensee shall promptly refill the opening and restore the surface to a condition satisfactory to the Town.

(B) If Licensee excavates the surface of any street, Licensee shall warrant the work performed within the Street and the area affected by the excavation for three (3) years and be responsible for restoration in accordance with applicable specifications and regulations of the Town. The Town may, after providing notice to Licensee, refill and/or repave any opening made by Licensee in the Street, and the expense thereof shall be paid by Licensee. The Town may, after providing notice to Licensee, remove and/or repair any work done by Licensee that, in the determination of the Town, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Licensee. All excavations made by Licensee in the Streets shall be properly safeguarded for the prevention of accidents. All of Licensee's work under this Agreement, and this Section, in particular shall be done in strict compliance with all specifications, rules, regulations and ordinances of the Town. Prior to any street or right-of-way cuts or openings, Licensee shall provide notice to the Town and any local notification association.

#### **10.5 Maintenance and Workmanship**

(A) Licensee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Streets by, or under, the Town authority.

(B) Licensee shall provide and use any equipment and appliances necessary to control and carry Licensee's signals so as to prevent injury to the Town's property or property belonging to any person. Licensee, at its own expense, shall repair, renew, change and improve its Facilities as listed above in good repair, and safe and presentable condition.

#### **10.6 Acquisition of Facilities**

Upon Licensee's acquisition of facilities in any Town Street, or upon the addition or annexation to the Town of any area in which Licensee owns or operates any facility, Licensee shall, at the Town's request, submit to the Town a statement describing all facilities involved, whether authorized by license, permit, license or other prior right, and specifying the location of all such facilities to the extent Licensee has possession of such information. Such facilities shall immediately be subject to the terms of this Agreement.

#### **10.7 Reservation of Town Streets Rights**

Nothing in this Agreement shall prevent the Town or public utilities owned, maintained and/or operated by public entities other than the Town from constructing sewers; grading,

paving, repairing and/or altering any street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Licensee's Cable System. However, if any of Licensee's Cable System interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, Licensee's Cable System shall be removed or replaced in the manner the Town shall direct, and Town shall in no event be liable for any damage to any portion of Licensee's Cable System. Any and all such removal or replacement shall be at the expense of Licensee. Should Licensee fail to remove, adjust or relocate its Facilities by the date established by the Town's written notice to Licensee, the Town may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Licensee, including all reasonable costs and expenses incurred by the Town due to Licensee's delay.

#### **10.8 Street Vacation**

If any street or portion thereof used by Licensee is vacated by the Town during the term of this Agreement, unless the Town specifically reserves to Licensee the right to continue its installation in the vacated Street, Licensee shall, without delay or expense to the Town, remove its Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the Town. In the event of failure, neglect or refusal of Licensee, after thirty (30) days' notice by the Town, to restore, repair or reconstruct such Street, the Town may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Town, shall be paid by Licensee within thirty (30) days of receipt of invoice and documentation, and failure to make such payment shall be considered a material breach of this Agreement.

#### **10.9 Discontinuing Use of Facilities**

Whenever Licensee intends to discontinue using any facilities within the Streets, Licensee shall submit for the Town's approval a complete description of the Facilities and the date on which Licensee intends to discontinue using the Facilities. Licensee may remove the Facilities or request that the Town permit it to remain in place. Notwithstanding Licensee's request that any such Facilities remain in place, the Town may require the Licensee to remove the Facilities from the Street or modify the Facilities to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Town may require Licensee to perform a combination of modification and removal of the Facilities. Licensee shall complete such removal or modification in accordance with a schedule set by the Town. Until such time as Licensee removes or modifies the Facilities as directed by the Town, or until the rights to and responsibility for the Facilities are accepted by another person having authority to construct and maintain such Facilities, Licensee shall be responsible for all necessary repairs and relocations of the Facilities, as well as maintenance of the Street, in the same manner and degree as if the Facilities were in active use, and Licensee shall retain all liability for such Facilities. If Licensee abandons its Facilities, Town may choose to use such Facilities for PEG Access purposes.

#### **10.10 Hazardous Substances.**

(A) Licensee shall comply with all applicable State and Federal laws, statutes, regulations and orders concerning hazardous substances relating to Licensee's Cable System in the Streets.

(B) Licensee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to Licensee, the Town may inspect Licensee's Facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to Licensee's Cable System. In removing or modifying Licensee's Facilities as provided in this Agreement, Licensee shall also remove all residues of hazardous substances related thereto.

(C) Licensee agrees to indemnify the Town against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by Licensee's Cable System in the Streets.

#### **10.11 Undergrounding of Cable**

Existing conduits, fiber or other cable owned by Licensee, as of the effective date of this Agreement, shall be placed underground when required by law. This undergrounding shall be at Licensee's expense. . Despite any language to the contrary, and to the extent that Licensee shares facilities with telecommunications facilities, Licensee shall not be required to underground its existing Facilities until such time that the shared telecommunications Facilities are lawfully required to be undergrounded. All new conduits, fiber or other cable owned by Licensee shall be placed underground.

#### **10.12 Construction Codes**

Licensee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Licensee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. In the event of such interference, the Town may require the removal or relocation of Licensee's lines, cables, and other appurtenances from the property in question.

### **SECTION 11. DESIGN AND CONSTRUCTION REQUIREMENTS**

#### **11.1 System Design**

The Licensee's Cable System shall comply with the design and service requirements and schedules contained in this Agreement, all applicable laws and regulations, and the attached Exhibits. All Licensee's construction shall be subject to the Town's supervision, public

inspection, and control, in accordance with local law, including, without limitation, location of Facilities, and placement of poles. Licensee shall submit construction drawings, design plans, and specifications for review on all projects; provided that plans need not contain proprietary information.

## **11.2 Geographical Coverage**

Licensee shall design and construct its Cable System in such manner as to have the capability to connect and provide Universal Service to every single-family dwelling unit, multiple-family dwelling unit, school and public agency within the License Area. This provision does not imply that Licensee will provide Universal Service; only that it shall have the capability of providing Universal Service to the License Area, in accordance with the provisions of this Agreement, and Licensee shall be responsible for compliance therewith. Notwithstanding any provision of this Agreement to the contrary, Licensee shall be excused from providing Cable Service to locations that are beyond the capability of the current technology to serve. As of the date of this Agreement, the current technology does not have the capability to serve locations that are beyond 3,800 feet from the serving DSLAM.

## **11.3 System Construction Schedule**

Within sixty (60) days prior to any construction in the License Area, Licensee shall meet all applicable design and construction standards of the Town and shall provide a detailed construction plan indicating the detailed construction progress schedule, area construction maps, test plan, and projected dates for offering service. Upon Town's request, Licensee shall update this information by submitting a copy of its normal internal progress reports, showing specifically whether schedules are being met and the reasons for any delay.

## **11.4 Installation of New Cable Underground**

All new or upgraded conduit, fiber or other cable owned by Licensee shall be installed underground where existing undergrounded utility Facilities exist. In areas where no poles exist Licensee shall place its Facilities underground, and Licensee shall move existing Facilities underground whenever all other utilities go underground.

## **11.5 Pre-wiring**

Any law of the Town which requires pre-wiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

## **11.6 Completion of Work by Town**

On failure of Licensee to commence, pursue or complete any work required by law or by the provisions of this Agreement or any applicable permit to be done in any public right-of-way

or public utilities easement, within the time specified, the Town may cause the work to be done. Licensee shall pay to the Town the reasonable costs of the work in the itemized amount reported by the Town to Licensee within thirty (30) days after receipt of the itemized report.

#### **11.7 Removal of Facilities**

On receipt of written notice, Licensee at its own expense shall:

(1) Protect, support, temporarily disconnect, relocate or remove any of its property as necessary because of traffic conditions, public safety, Street vacation or Street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other type of structure or improvements; and

(2) Nothing described in this Section shall be considered a taking of the property of Licensee and Licensee is not entitled to additional compensation because of these actions.

#### **11.8 Stop Work**

(A) On notice from the Town that any work is being prosecuted contrary to the provisions of this Agreement, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Town.

(B) The stop work order shall be:

(1) In writing;

(2) Given to the individual doing the work, or posted on the work site; and

(3) Sent to Licensee by overnight delivery at the address given herein; and may:

(a) Indicate the nature of the alleged violation or unsafe condition; and

(b) Establish conditions under which work may be resumed.

#### **11.9 Licensee's Contractors**

Licensee's contractors shall be licensed and bonded in accordance with Town's ordinances, regulations or requirements of any contractors working in the Streets. Any act or omission of any contractor of Licensee that violates any provision of this Agreement shall be considered an act or omission of Licensee for the purposes of this Agreement.

### **11.10 Private Property**

Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, Licensee shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed; provided that in the case of construction operations, such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. If any Licensee activity or omission causes any damage, Licensee shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. For installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance. Licensee will be solicitous of directly adjoining property owners' concerns regarding placement of above grade Facilities. In the case of an emergency (as defined above), Licensee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

## **SECTION 12. CONSTRUCTION AND TECHNICAL STANDARDS**

### **12.1 Construction Standards**

(A) Licensee shall comply with all applicable Town construction codes, including, without limitation, the Uniform Building Code, the Uniform Fire Code, and the Uniform Mechanical Code, and the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, zoning ordinances and permit procedures. Town may charge reasonable permit and inspection fees to recover any inspection costs imposed by the construction of the Cable System.

(B) All construction practices shall be in accordance with all applicable Sections of Federal and State Occupational Safety and Health Acts and any amendments thereto as well as all State and local codes and standards where applicable.

(C) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code as amended, and all applicable State and local codes.

(E) Neither Licensee's plant and equipment, nor any work Licensee performs, shall endanger or interfere in any manner with the rights of any property owner.

(F) Licensee shall at all times employ professional care and shall install and maintain in use methods and devices to prevent failures and accidents which risk damage, injury or nuisance to the public.

## **12.2 Technical Standards**

The Cable System shall meet or exceed all applicable technical and performance standards of the Federal Communications Commission, or its successor agency, as a minimum.

## **12.3 Test and Compliance Procedure**

Upon reasonable advance written request, testing required by the FCC rules may be witnessed by representatives of the Town. Licensee shall provide the Town with reports and copies of any tests in which the locations or items tested failed to meet the relevant performance standards, and such failure was not corrected by Licensee within thirty (30) days from the date of the initial test failure.

## **12.4 Additional Tests**

At any time after commencement of Cable Service to Subscribers, the Town may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific Subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating any unresolved controversy or noncompliance, and such tests shall be limited to the particular matter in controversy. The Town shall endeavor to so arrange its request for such special tests so as to minimize hardship or inconvenience to Licensee or to the Subscriber. Failure to perform properly requested additional tests within thirty (30) days shall constitute a material breach of this Agreement.

# **SECTION 13: SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION**

## **13.1 General Requirements**

Licensee shall meet or exceed all construction, extension, and service availability requirements set forth in this Agreement or the attached exhibits.

## **13.2 Nondiscrimination**

Licensee shall not arbitrarily refuse to provide Cable Services to any Person within its License Area.

## **13.3 Service Availability**

(A) In General. Except as otherwise provided herein, Licensee shall perform standard installations to provide Cable Service within seven (7) business days of a request by any Person within its License Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Licensee, receipt of a written request by Licensee or receipt by Licensee of a verified verbal request. Except as otherwise provided herein,

Licensee shall provide such service with no line extension charge except as specifically authorized elsewhere in this Agreement.

(B) Incremental Line Extension Costs. Licensee shall comply with the line extension policy set forth in Section 13.8 of this Agreement.

#### **13.4 Interconnection with Other Cable Systems**

(A) Licensee shall, in accordance with this Section, interconnect the PEG Access Channels of the Cable System with any other contiguous or overlapping Cable System upon the directive of the Town. Interconnection of Channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. The Town shall not direct Interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to Licensee or its Subscribers.

(1) Upon receiving the directive of the Town to interconnect, Licensee shall immediately initiate negotiations with the other affected system or systems and shall report to the Town the results of such negotiations no later than sixty (60) days after such initiation. All costs of Interconnection, which may be external pass-through costs to Subscribers, shall be shared on a pro rata basis among the cable companies for both construction and operation of the interconnect link.

(2) Licensee may be granted reasonable extensions of time to interconnect or the Town may rescind its order to interconnect upon petition by the Licensee to the Town. The Town shall grant such request if it finds that the Licensee is negotiating in good faith and has failed to obtain approval from the system or systems for the proposed interconnection or that the cost of interconnection would cause unreasonable or unacceptable increase in Subscriber rates.

(C) Licensee shall cooperate with any public interconnection authority, regional Interconnection authority, town or city, county, State or Federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the Interconnection of Cable Systems beyond the boundaries of the License Area.

(D) Notwithstanding any provision of this section, Licensee shall not be required to interconnect its Cable System to any Person providing competing Cable Services within the License Area (whether through a cable system, open video system, or otherwise) unless such Person contributes to the Town the same proportional level of PEG Access Facilities, equipment and support as Lessee has provided under the terms of this Agreement.

#### **13.5 Inspection of Construction**

The Town shall have the right to inspect any construction or installation work performed under this Agreement. The Town shall have the right to make such tests as it deems necessary to ensure compliance with the terms of this Agreement and applicable provisions of law, and to

charge generally applicable inspection fees therefore.

### **13.6 Quality and Workmanship**

The Cable System constructed or erected by Licensee shall be of good quality and workmanship and shall be maintained in good repair and efficiency, and shall meet or exceed all FCC technical standards.

### **13.7 Connection of Public Facilities**

When requested, Licensee shall provide, at no charge to the Town, a Standard Commercial Drop, including one cable outlet, and provide Licensee's Full Choice™ Basic Cable Service, or its equivalent to each of the public buildings specified in Exhibit B. Upon request of Town, Licensee shall provide service to new public buildings or educational institutions.

In no event shall Licensee be required to install such Standard Commercial Drop and provide such service unless the public building to be served is located within a constructed service area.

A. Upon request of the Town, Licensee shall extend the Cable System to additional public buildings; provided that the Town shall be responsible for the reasonable actual costs of labor and materials incurred by Licensee.

### **13.8 Line Extension Policy**

After construction of the Cable System pursuant to the schedule in Exhibit A, Licensee shall make Cable Service available to Dwelling Units in the Town pursuant to the following line extension policy:

A. When requested by a resident or developer and when the density is at least 50 dwelling units within an existing SAI, Licensee shall, at Licensee's sole expense, extend the Cable System to such dwelling units and make Cable Service available to such Dwelling Units within one hundred twenty (120) days of any request for such service. Each unit in an MDU shall be counted as a Dwelling Unit in determining residential density, provided that a mutually acceptable agreement granting Licensee access to the MDU has been executed and delivered by Licensee and the property owner.

B. If a resident or developer requests an extension of the Cable System to an area which does not meet the minimum density requirements specified above, Licensee shall be required to comply with such request only if the resident or developer agrees to pay to Licensee all incremental costs for the line extension in excess of what the costs would be for extending the Cable System to such area if its density were 50 homes within an SAI. Compliance shall be within 120 days after such request. The incremental costs to be paid shall be Licensee's costs.

(reasonable labor and materials) of extending the Cable System consistently with Licensee's overall system design to the residence, or to and throughout the development, from the nearest technically feasible point of connection on the Cable System, including the cost of any additional required SAI and DSLAM cabinets and BNU's.

C. To illustrate: If the density is 40 homes within the SAI, the incremental costs the resident or developer pays to Licensee shall be 20% of the total costs of extension. (The density of 40 homes per mile is 80% of the minimum density of 50 homes within an SAI. The remaining increment of 20% is borne by the resident or developer.) Licensee shall not be required to make Cable Service available to residents of an MDU project until a mutually acceptable agreement granting Licensee access to the MDU has been executed and delivered by Licensee and the property owner.

D. After construction of the Cable System pursuant to the schedule in Exhibit A, Licensee shall make Cable Service available to all commercial establishments and other non-residential properties in the Town whenever such establishments or properties can be served by a Standard Drop from a DSLAM or BNU. If a commercial establishment or other non-residential property cannot be served by such Standard Drop, Licensee shall be required to make Cable Service available only if such establishment or property owner agrees to pay to Licensee the costs specified in Section 13.8.

E. No resident, residential developer, commercial establishment or other non-residential property shall be arbitrarily refused Cable Service by Licensee, provided that Licensee shall not be required to provide Cable Service to any Subscriber who does not pay any applicable fee for cable service, including line extension and connection fees.

F. Notwithstanding any provision of this Agreement to the contrary, Licensee shall be excused from providing Cable Service to locations that are beyond the capability of the current technology to serve. As of the date of this Agreement, the current technology does not have the capability to serve locations that are beyond 3,800 feet from the serving DSLAM.

## **SECTION 14: TECHNICAL AND OPERATIONAL STANDARDS AND REQUIREMENTS.**

### **14.1 Technical and Safety Standards**

(A) Licensee shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public or to employees of Licensee.

(B) Licensee shall install and maintain its Cable System in accordance with the

requirements of the National Electrical Safety Code and all applicable FCC regulations, and in such manner that the Cable System shall not interfere with any installations of the Town nor any public utility or telecommunication utility, nor any licensee, or permittee of the Town.

(C) Licensee shall provide and put in use such equipment and appliances so as to prevent injury to the wires, pipes, structures, and property belonging to the Town or to any Person within the Town's jurisdiction.

(D) Licensee, at its own expense, shall repair, renew, change, and improve its Cable System from time to time as may be necessary to accomplish these purposes.

#### **14.2 Cable System Performance Testing**

(A) Licensee shall, at Licensee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) Additional tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement.

(B) At a minimum, the Licensee's tests shall include:

(1) Proof of performance for starting up any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines; and

(3) Tests in response to Subscriber complaints.

(C) Licensee shall maintain written Records of all results of its Cable System tests, performed by or for Licensee. Such test results shall be available for inspection by the Town upon request.

(D) If the FCC no longer requires proof of performance tests for Licensee's Cable System during the term of this Agreement, Licensee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards current at the time of execution of this Agreement, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to Town. Representatives of the Town may witness all tests.

### 14.3 Specific Technical Facilities or Capabilities

The following specific technical Facilities or capabilities shall be provided on the Cable System by the Licensee:

(A) Emergency Standby Power. Licensee shall provide standby power generating capacity at the Cable System control center and at all Headends capable of providing at least twelve (12) hours of emergency operation. Licensee shall maintain standby power system supplies, rated at least at one and one-half (1-1/2) hour's duration, up to but not including the DSLAM or its equivalent. In addition, throughout the term of this Agreement, Licensee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than one and one-half (1-1/2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town no later than ninety (90) days following the effective date of this Agreement.

(B) Emergency Alert System. Licensee shall install and thereafter maintain for use by the Town, an Emergency Alert System ("EAS"), as required by FCC rules and regulations currently in effect and hereinafter amended. Subject to Federal and State laws and the Town's EAS operational area plan, Licensee shall permit Town officials to interrupt the audio portion of all Channels for the purpose of transmitting public safety, health and welfare message to all Subscribers.

(C) Headend Performance. Licensee shall adopt and maintain performance standards for all Headend systems, including off-air station reception, satellite signals, insertion signals, and equipment for reception and routing of Interconnected signals from other providers, including Interconnect networks, consistent with Federal law. All Cable System performance testing shall also include all Headend systems. Such tests shall include the cascade effects of headend receivers, processors, Fiber Optic switching equipment and any other devices in the signal path.

## SECTION 15. LICENSE BREACHES; TERMINATION OF LICENSE

### 15.1 Procedure for Remediating License Violations

(A) If the Town believes that Licensee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, the Town shall notify Licensee in writing, stating with reasonable specificity the nature of the alleged default. Licensee shall have thirty (30) days from the receipt of such notice to:

- 1) Respond to the Town, contesting the Town's assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below; or
- 2) Cure the default; or

3) Notify the Town that Licensee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days in accordance with this Subsection (A)(3), Licensee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact

steps that will be taken and the projected completion date. In such case, the Town may set a hearing in accordance with Subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Licensee's proposed completion schedule and steps are reasonable.

Upon five (5) business days' prior written notice, either the Town or Licensee may call an informal meeting to discuss the alleged default.

(B) If Licensee does not cure the alleged default within the cure period stated above, or by the projected completion date under Subsection (A)(3) above, or denies the default and requests a hearing in accordance with Subsection (A)(1) above, or Town orders a hearing in accordance with Subsection (A)(3), the Town shall set a public hearing to investigate said issues or the existence of the alleged default. Town shall notify Licensee of the hearing in writing and such hearing shall take place no less than thirty (30) days after Licensee's receipt of notice of the hearing. At the hearing, Licensee shall be provided an opportunity to be heard in person or by counsel, to cross-examine witnesses, to present evidence and testimony in its defense and to submit written and oral argument. A written Record shall be made of all proceedings held, and all evidence and testimony submitted, at the hearing. The determination as to whether a material default or a material breach of this Agreement has occurred and as to whether the default or breach was within the reasonable control of Licensee shall be made by Town based upon a preponderance of the evidence presented at the hearing, and Town shall issue a written decision stating its reasons for any adverse determination

(C) If, after the public hearing, the Town determines that a default still exists, the Town shall order Licensee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as Town shall determine. In the event Licensee does not cure within such time to the Town's reasonable satisfaction, the Town may:

(1) Withdraw an amount from the letter of credit as monetary damages in accordance with subsection 15.2, below; or

(2) Revoke this Agreement in accordance with subsection 15.3 of this License;  
or

(3) Pursue any other legal or equitable remedy available under this Agreement or any applicable law.

## 15.2 Assessment of Liquidated Damages

(A) Upon completion of the procedures set forth in Subsection 15.1 above, and from the date of said completion, the Town may assess against Licensee liquidated damages up to one hundred dollars (\$100.00) per day for material breaches of or material defaults under the terms of this Agreement which are within Licensee's reasonable control, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Agreement. To assess any amount specified herein from the letter of credit, Town shall follow the procedures for withdrawals from the letter of credit set forth in Section 5.3.

(B) The assessment does not constitute a waiver by the Town of any other right or remedy it may have under the Agreement or applicable law including its right to recover from the Licensee any additional damages, losses, costs and expenses that are incurred by the Town by reason of the breach of this Agreement.

## 15.3 Revocation

(A) In addition to revocation in accordance with other provisions of this Agreement, Town may revoke this Agreement and rescind all rights and privileges associated with this Agreement in the following circumstances, each of which represents a material breach of this Agreement:

(1) If Licensee fails to perform any substantial obligations under this Agreement or under any ordinances, documents or other terms and provisions entered into by and between the Town and Licensee in furtherance of this Agreement, and the Section 15.1 procedures for establishing a material breach or default within Licensee's reasonable control have been followed and completed, and the Town has determined that a material breach or default within Licensee's reasonable control has occurred;

(2) If Licensee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service, subject to the provisions of Section 4.5 of the Agreement, regarding *force majeure*;

(3) If Licensee practices any intentional fraud or deceit upon the Town; or

(4) If Licensee becomes insolvent, or if there is an order for relief in favor of the Licensee in a bankruptcy proceeding.

(B) The Town shall provide the Licensee written notice of its intent to consider revocation under this subsection at least thirty (30) days prior to the date of the hearing in accordance with subsection (C), below. Licensee may object in writing to the Town, stating its reasons for its objections.

(C) At any hearing to consider revocation conducted pursuant to this section, the Town shall hear any persons interested in the revocation, and shall allow Licensee, in particular, full due process rights, including without limitation the right to appear in person or by counsel, the right to cross-examine witnesses, the right to present evidence and testimony, and the right to submit written and oral arguments. A written Record shall be made of all proceedings held, and all evidence and testimony submitted, at the hearing. Any determination by Town to revoke the Agreement shall be based on a preponderance of the evidence presented at the hearing, and Town shall issue a written decision regarding any such adverse determination within ninety (90) days after the conclusion of the hearing. In any such adverse written decision, Town shall provide a full statement of reasons supporting its revocation of the Agreement and, if applicable, its determination that the letter of credit should be forfeited. In the alternative, Town may determine that any breach or default found is capable of being cured by Licensee, and may direct Licensee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town determines are reasonable under the circumstances. The Town may also take any other lawful action that it deems appropriate to enforce Town's rights under the Agreement in lieu of revocation of the Agreement. Any decision by the Town to revoke the Agreement shall be subject to review in a court of competent jurisdiction..

#### **15.4 Procedures in the Event of Termination or Revocation**

(A) If this Agreement expires without renewal or is otherwise lawfully terminated or revoked, the Town may, subject to applicable law and the provisions of subsection (D) of this Section:

(1) Allow Licensee to maintain and operate its Cable System on a month-to-month or other extension of this Agreement; or

(2) Subject to Subsection (D) of this Section, order the removal of the above-ground system Facilities and such underground Facilities as required by the Town in order to achieve reasonable engineering or Street use purposes, from the License Area at Licensee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, Licensee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good condition as that prevailing prior to Licensee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Licensee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

(B) If Licensee fails to complete any removal required by subsection 15.4(A)(2) above, after the date of written notice and to the satisfaction of the Town, the Town may cause the work to be done and Licensee shall reimburse the Town for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or the Town may recover the costs through the letter of credit provided by Licensee.

(C) The Town may seek legal and equitable relief to enforce the provisions of this Agreement.

(D) Anything to the contrary in this Agreement notwithstanding, Licensee shall not be required to remove its Cable System from the rights-of-way, and shall not be required to sell or transfer its Cable System, or any interest therein, to the Town or to any third party, if the Cable System is lawfully in use for the provision of services as to which no license from the Town is required, or as to which any license from the Town which is required has been obtained.

### **15.5 Receivership and Foreclosure**

(A) At the option of the Town, subject to applicable law, this Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all defaults under the Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Licensee, the Town may serve notice of revocation on Licensee and to the purchaser at the sale, and the rights and privileges of Licensee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Agreement.

### **15.6 No Recourse Against the Town**

Licensee shall not have any monetary recourse against the Town or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, except as in accordance with provisions of Federal law.

### **15.7 Non-enforcement by the Town**

Licensee is not relieved of its obligation to comply with any of the provisions of this Agreement or the Agreement ordinance by reason of any failure of the Town to enforce prompt compliance. Licensee's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement.

### **15.8 Compliance with State Statutes**

Licensee acknowledges Arizona Revised Statute Section 38-511.

## **SECTION 16. LICENSE RENEWAL AND TRANSFER**

### **16.1 Negotiated Renewal**

(A) As an alternative to the formal renewal procedures set forth in the Cable Acts of 1984 and 1992, Licensee may submit to the Town a proposal for extension or renewal of the Agreement at any time before the expiration of the Agreement.

(B) Town and Licensee at any time may elect to negotiate a proposed License renewal.

### **16.2 Transfer of Ownership or Control**

(A) In this Section, the following words have the meanings indicated:

(1) "Control" means actual working control in whatever manner exercised. "Control" includes, but may not necessarily require, majority voting ownership or control.

(2) "Proposed Transferee" means a proposed purchaser, transferee, lessee, assignee or person acquiring controlling ownership or other control of the License or Licensee.

(B) Licensee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Agreement or any of the rights or privileges therein granted, without the prior consent of the Town, except that such consent shall not be required for an intracompany transfer from one entity to another entity where both entities are under common ownership or control. The consent required by the Town shall be given or denied no later than one-hundred and twenty (120) days following any request, and may not be unreasonably withheld, but may be conditioned upon the performance of those requirements necessary to ensure compliance with the Agreement imposed upon Licensee by Town.

(C) The requirements of Subsection B shall also apply to any change in control of

Licensee. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons acting in concert of fifty percent (50%) or more of the voting rights of the shares or other ownership interests of Licensee. A transfer of control by Licensee shall void this Agreement unless and until the Town consents in writing. The consent required shall be given or denied by the Town no later than one-hundred and twenty (120) days following a request, and may not be unreasonably withheld. For the purpose of determining whether it should consent to transfer of control, the Town may inquire into the legal, technical and financial qualifications of the proposed transferee and Licensee shall assist the Town in the inquiry.

(D) In seeking the Town's consent to any change in ownership or control, the Licensee shall require the proposed transferee to indicate whether it:

(1) Has ever been convicted or held liable for acts involving fraud, deceit or misrepresentation to or upon a governmental entity under any Federal, State or local law or regulation, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in such an action for fraud, deceit, or misrepresentation entered against it by any court of competent jurisdiction;

(3) Has pending any material legal claim, law suit, or administrative proceeding arising out of or involving a Cable System, except that any such claims, suits or proceedings relating to insurance claims, theft of service, or employment matters need not be disclosed;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the parent corporation, along with any other data that the Town may reasonably require; and

(5) Has the financial and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Agreement.

(E) The consent or approval of the Town to any transfer by Licensee does not constitute a waiver or release of the rights of the Town in or to its public rights-of-way or easements and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.

(F) A sale, transfer or assignment of the License may not be approved without the successor in interest becoming a signatory to this Agreement.

(G) Notwithstanding anything contained in this Agreement, Licensee may pledge the assets of the Cable System for the purpose of financing; provided that such pledge of assets shall not impair or mitigate Licensee's responsibility and capability to meet all of its obligations under the provisions of this Agreement.

(H) In considering Licensee's application for this License, the Town has considered the pending merger of Licensee's Parent Corporation U S WEST, Inc. and Qwest, and has determined that such merger is consistent with the requirements of the Town. Licensee represents that it is its intention that Licensee will survive the merger and will continue to operate under this Agreement on a business as usual basis after the merger. In addition, if Licensee does not survive as the leasing entity for the purposes of this Agreement, its successor entity shall be

an Affiliate and shall agree in writing to the terms of this Agreement within thirty (30) days following the consummation of the merger, and if it does not do so within such time, the Town may declare a material breach of this Agreement. Thus, absent a material change in circumstances, this Agreement is entered into in contemplation of the pending merger, and upon consummation no further action, approval, or consent by the Town shall be required.

## **SECTION 17. SEVERABILITY**

### **17.1 Severability**

If any section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, paragraph term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement, or any renewal or renewals thereof. In the event of such determination by a court of competent jurisdiction, the Town or Licensee shall have the option to reopen the affected sections of this Agreement and those sections directly related to same for negotiation.

### **17.2 Waiver of Challenge**

Licensee agrees that it will not challenge Town's authority to enter into this Agreement as of the effective date hereof.

## **SECTION 18. MISCELLANEOUS PROVISIONS**

### **18.1 Preferential or Discriminatory Practices Prohibited**

(A) Licensee shall not discriminate in hiring, employment, or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability. Throughout the term of this Agreement, Licensee shall fully comply with all equal employment or non-discrimination provisions and requirements of Federal, State and local law, and in particular FCC rules and regulations relating thereto.

(B) Upon request, Licensee shall furnish Town a copy of Licensee's Annual statistical report filed with the FCC and proof of Licensee's Annual certification of compliance.

## **18.2 Notices**

Throughout the term of the Agreement, Licensee shall maintain and file with the Town a local address for the service of notices by mail. A copy of all notices from Town to Licensee shall be sent to such address and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

Romaine Pacheco  
Director, Cable Franchise/Regulatory  
U S WEST Broadband Services, Inc.  
1801 California Street, Suite 3331  
Denver, CO 80202

And

Norman Curtright, Esq.  
Senior Attorney  
U S WEST Communications, Inc.  
1801 California Street, Suite 5100  
Denver, CO 80202

All notices and information to be sent by the Licensee to Town under this Agreement shall be sent to:

Town Manager  
Town of Paradise Valley  
6401 East Lincoln Drive  
Paradise Valley, AZ

## **18.3 Execution**

This Agreement shall not be entered into, or binding, until fully executed by the Town in accordance with all legal requirements appertaining thereto, including full signature, execution and attestation in the spaces below. This Agreement shall be binding upon the heirs, successors, and assigns of the parties hereto in case of a transfer of all, or substantially all, of the assets of Licensee, or in case any or all of them assume authority over the operation of this Agreement,

and failure to agree to, or abide by, the terms of this Agreement by any entity or person assuming authority over the operation of the Agreement, shall be deemed a violation of this Agreement.

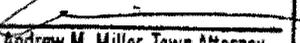
**TOWN OF PARADISE VALLEY**

By:   
Mayor

Attest:   
Town Clerk

**U S WEST BROADBAND SERVICES, INC.**

By:   
President

APPROVED AS TO FORM:  
  
Andrew M. Miller, Town Attorney

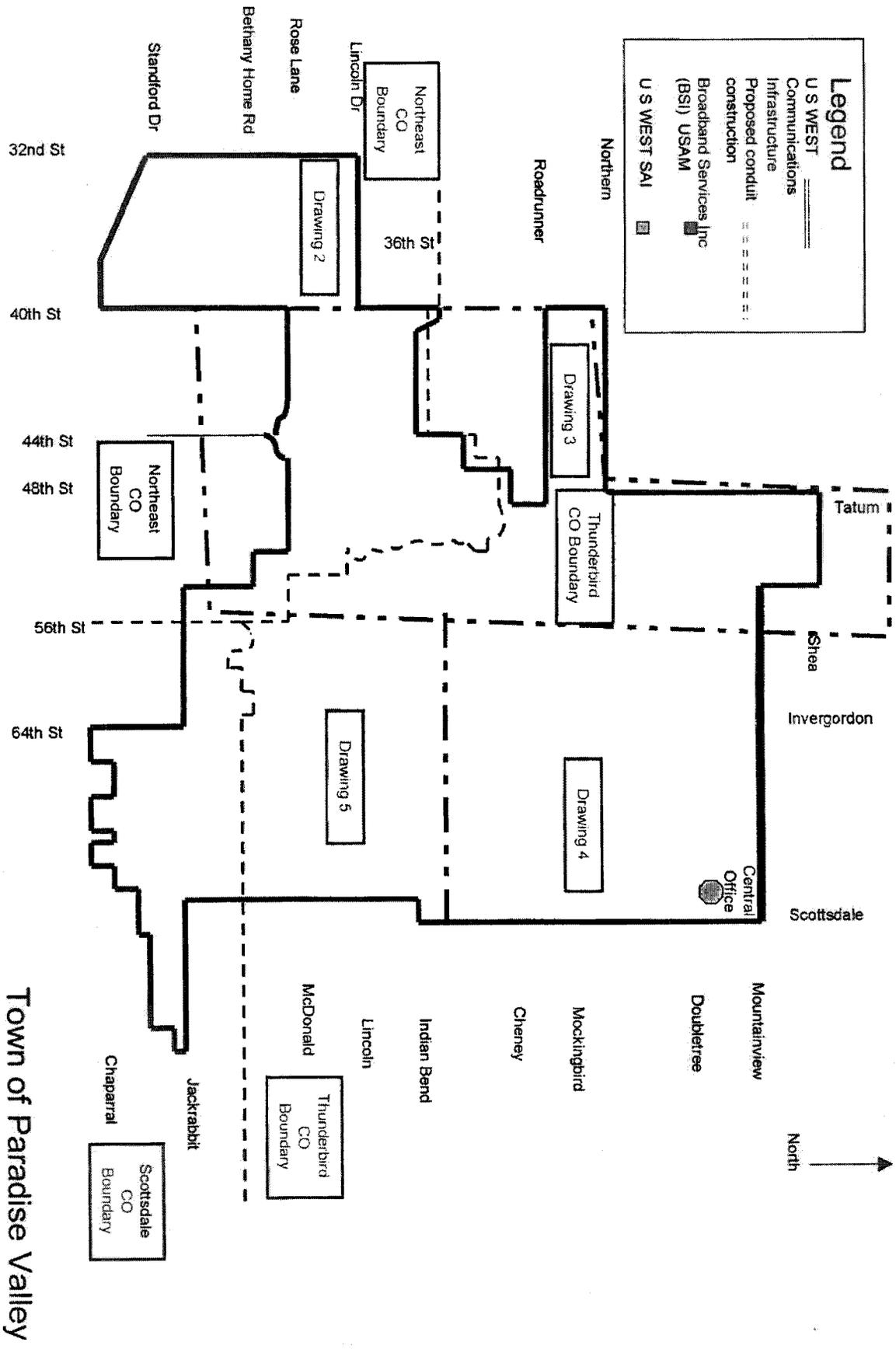
**EXHIBIT A**

**Construction Schedule**

<b>Wire Center</b>	<b>Build Schedule</b>	<b>Address</b>
SCDLAZTH	20002Q	5901 e lincoln dr
SCDLAZTH	20002Q	5701 e lincoln dr
SCDLAZTH	20002Q	6004 n invergordon rd
SCDLAZTH	20002Q	6004 n invergordon rd
SCDLAZTH	20002Q	6160 n scottsdale rd
SCDLAZTH	20002Q	6363 e lincoln dr
SCDLAZTH	20002Q	6510 n invergordon rd
SCDLAZTH	20002Q	6818 e indian bend rd
SCDLAZTH	20002Q	6818 e indian bend rd
SCDLAZTH	20002Q	7200 n scottsdale rd
SCDLAZTH	20002Q	7201 e palo verde dr
SCDLAZMA	20004Q	7100 e jackrabbit rd
SCDLAZMA	20004Q	7201 e jackrabbit rd
PHNXAZNE	20004Q	5605 n 32nd st
SCDLAZMA	20004Q	6405 e phoenician blvd
SCDLAZMA	20004Q	7001 e chaparal rd
SCDLAZMA	20004Q	7100 e jackrabbit rd
SCDLAZMA	20004Q	7333 e chaparal rd
PHNXAZNE	20004Q	3445 e stanford dr
PHNXAZNE	20004Q	3599 e rose ln
PHNXAZNE	20004Q	3601 e stanford dr
PHNXAZNE	20004Q	3745 e bethany home rd
PHNXAZNE	20004Q	4357 e san miguel av
PHNXAZNE	20004Q	4795 e lincoln dr
PHNXAZNE	20004Q	4795 e lincoln dr
PHNXAZNE	20004Q	6310 n tatum blvd
SCDLAZTH	20004Q	9802 n scottsdale rd
SCDLAZTH	20012Q	4801 e roadrunner rd
SCDLAZTH	20012Q	4821 e shea blvd
SCDLAZTH	20012Q	5343 e doubletree ranch rd
SCDLAZTH	20012Q	6100 e doubletree ranch rd
SCDLAZTH	20012Q	6265 e mockingbird ln
SCDLAZTH	20012Q	6348 e arabian wy

SCDLAZTH	20012Q	6389 e northern av
SCDLAZTH	20012Q	6805 e doubletree ranch rd
SCDLAZTH	20012Q	7302 n tatum blvd
SCDLAZTH	20012Q	7902 n tatum blvd
SCDLAZTH	20012Q	8504 n 56 st
SCDLAZTH	20012Q	8542 n tatum blvd
SCDLAZTH	20012Q	8651 n tatum blvd
SCDLAZTH	20012Q	9000 n tatum blvd
SCDLAZTH	20014Q	6501 e lincoln dr
SCDLAZTH	20014Q	5409 e doubletree ranch rd

TOWN OF PARADISE VALLEY



**Legend**

- U S WEST Communications Infrastructure
- Proposed conduit construction
- Broadband Services Inc (BSI) USAM
- U S WEST SAI

32nd St  
40th St  
44th St  
48th St  
56th St  
64th St

Stanford Dr  
Rose Lane  
Bethany Home Rd  
Lincoln Dr  
Roadrunner  
Tatum  
Shea  
Invergordon  
Scottsdale  
Mountainview  
Doubletree  
Mockingbird  
Cheney  
Indian Bend  
Lincoln  
McDonald  
Jackrabbit  
Chaparral

Drawing 2  
Drawing 3  
Drawing 4  
Drawing 5  
Drawing 1

Northeast CO Boundary  
Thunderbird CO Boundary  
Scottsdale CO Boundary

Central Office

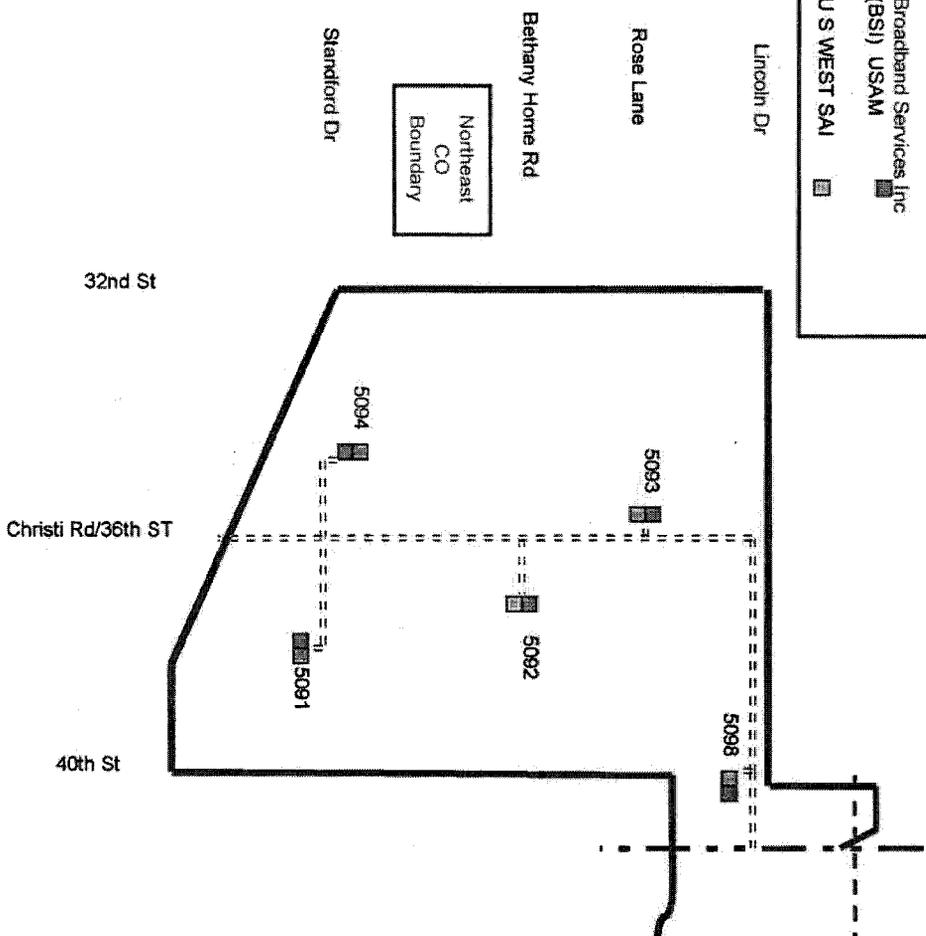
**Town of Paradise Valley**

3/9/00

Preliminary Design -- Subject to Change

**Legend**

- U S WEST Communications Infrastructure Proposed conduit construction
- Broadband Services, Inc (BSI) USAM
- U S WEST SAI



Matchline  
See drawing 3

Thunderbird  
CO Boundary

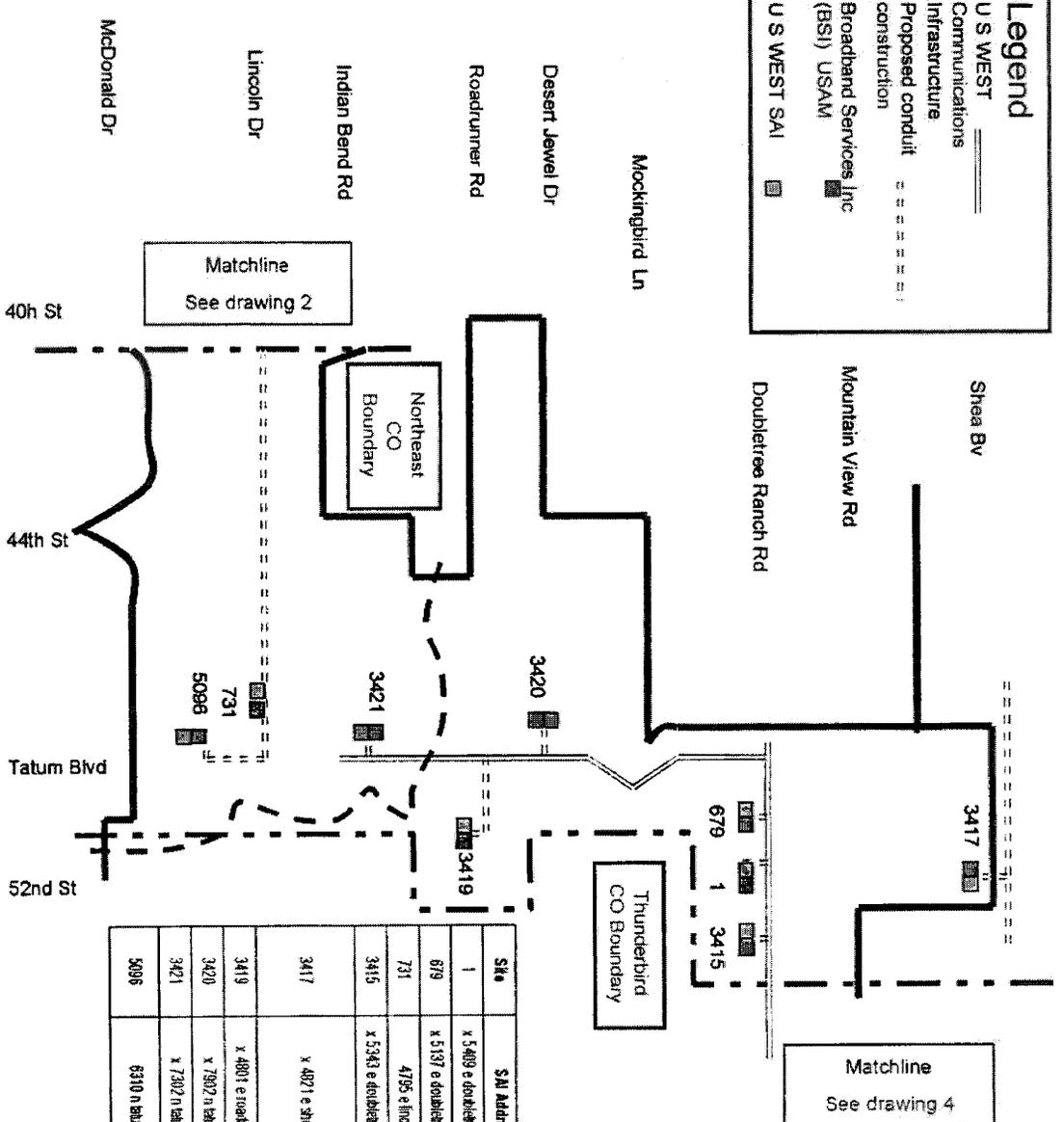
City	Address	Area	Notes
5091	3801 e standard dr	250	To Mt. Mary require conduit construction
5092	3745 e bethany home rd	3400	Includes construction on Bethany Home and part of 36th St
5093	3509 e rose ln	2000	Construction to 31th St and part of 36th St
5094	3445 e standard dr	350	Includes construction on Standard Dr to 36th St
5098	4027 e lincoln dr	2800	Includes construction on Lincoln Dr to 36th St

**Legend**

U S WEST  
 Communications Infrastructure  
 Proposed conduit construction

Broadband Services, Inc (BSI) USAM

U S WEST SAI



Site	SAI Address	Build Footprint (sq ft)	Notes	Draw No
1	x 5489 e doubletree ranch rd	250	Construction to Doubletree Ranch Road conduit	3
679	x 5137 e doubletree ranch rd	360	Construction to Doubletree Ranch Road conduit	3
731	4795 e finch dr	2,600	Conduit construction on Lincoln Drive to site 5096	3
3415	x 5343 e doubletree ranch rd	280	Construction to Doubletree Ranch Road conduit	3
3417	x 4871 e shea blvd	360	Conduit construction to Shea, also requires conduit construction on Shea	3
3419	x 4881 e roadrunner rd	500	Conduit construction on Roadrunner to Tatum	3
3420	x 7307 n tatum blvd	250	Conduit construction to Tatum	3
3421	x 7302 n tatum blvd	360	Conduit construction to Tatum	3
5096	6310 n tatum blvd	1,300	Conduit construction on Tatum to Lincoln, then to site 731	3

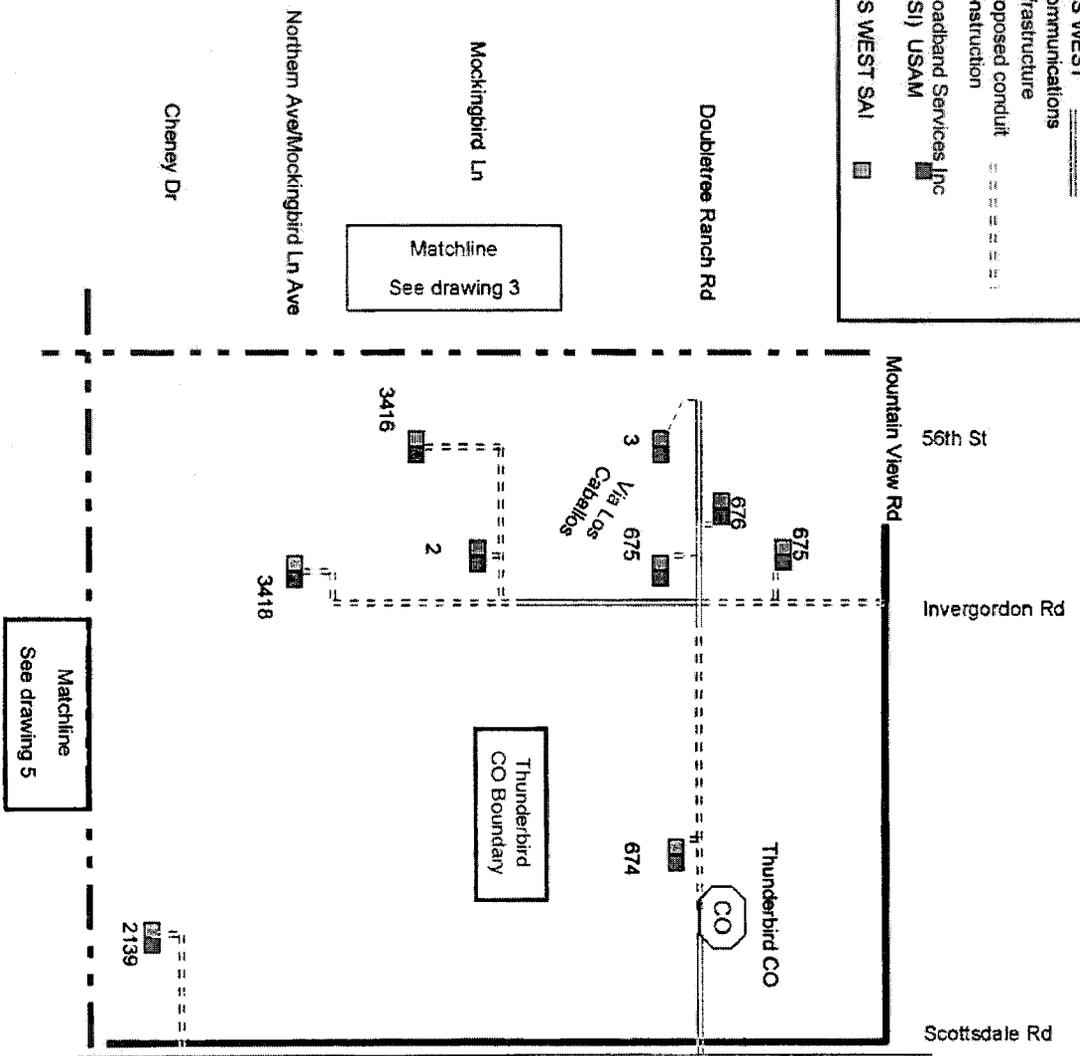
Preliminary Design -- Subject to Change

**Legend**

U S WEST  
Communications  
Infrastructure  
Proposed conduit  
construction

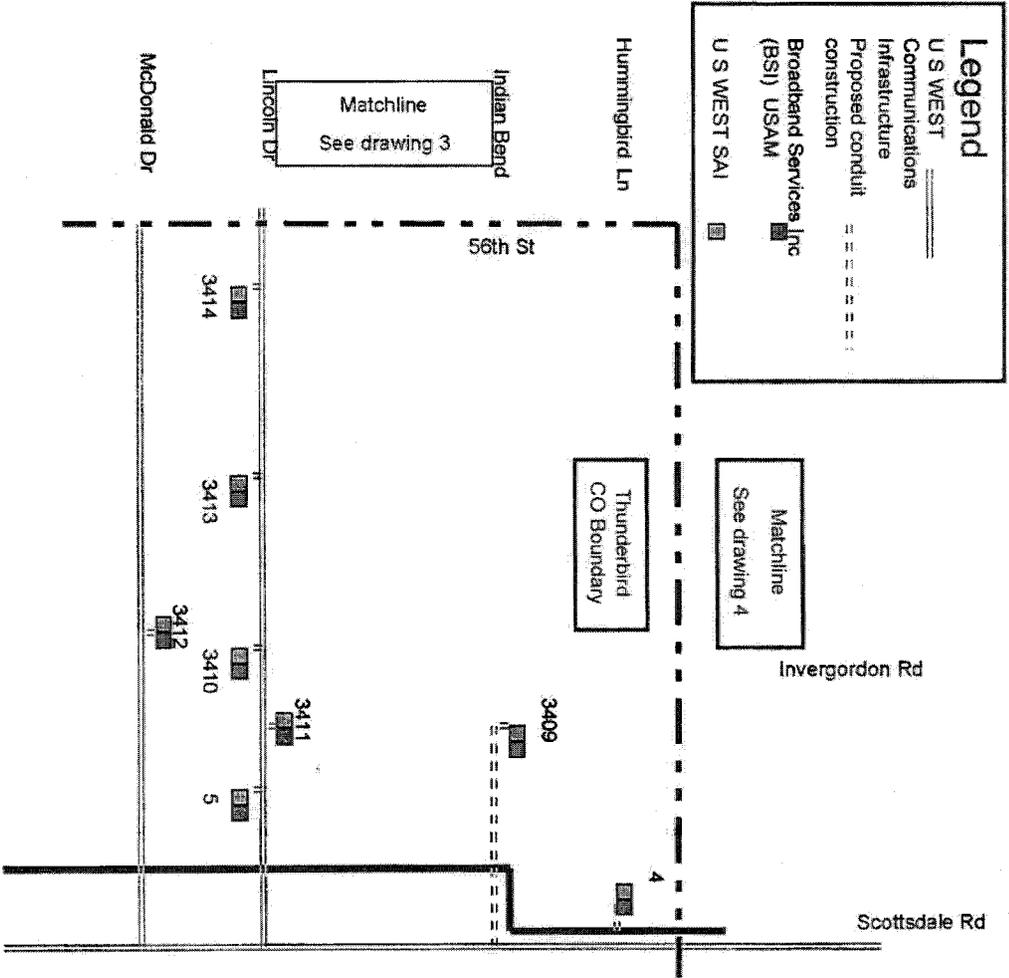
Broadband Services, Inc  
(BSI) USAM

U S WEST SAI



2	6265 e meadowland ln	2,500	New conduit on Mockingbird and Invergordon to existing conduit
3	5901 E. via los caballos	500	New conduit on Via Los Caballos to Doubletree
674	x 0905 e doubletree ranch rd	500	New conduit to Doubletree and MH1
675	x 6316 e arden way	720	New conduit on Arden to Invergordon plus 7000 feet on Invergordon to Doubletree
676	x 6100 e doubletree ranch rd	380	New conduit on Doubletree to CO
2139	x 7044 e cheney dr	1,000	New conduit on Cheney to Scottsdale Rd
3416	x 8504 n 56 st	1,000	New conduit on 56th St and Mockingbird to see 2
3418	x 8386 e northern av	3,000	New conduit on Northern to Mockingbird and to Invergordon

Preliminary Design -- Subject to Change



**Legend**

- U S WEST Communications Infrastructure
- Proposed conduit construction
- Broadband Services Inc (BSI) USAM
- U S WEST SAI

Matchline  
See drawing 4

Thunderbird  
CO Boundary

Matchline  
See drawing 3

4	x 7200 n scottsdale rd	300	New conduit to Scottsdale Rd
5	x 5501 e lincoln dr	500	New conduit to Lincoln Dr
3409	0818 e indian bend rd	2000	New conduit to Indian Bend and to Scottsdale Rd
3410	6363 e lincoln dr	250	New conduit to Lincoln Dr
3411	6510 n rivergordon rd	250	New conduit to Lincoln Dr
3412	6004 e invergordon rd	500	New conduit to McDonald Dr
3413	5901 e lincoln dr	250	New conduit to Lincoln Dr
3414	5701 e lincoln dr	250	New conduit to Lincoln Dr

**EXHIBIT B**

**Public Buildings**

TOWN HALL

PUBLIC WORKS

POLICE DEPARTMENT

KIVA ELEMENTARY SCHOOL

CHEROKEE ELEMENTARY SCHOOL

**EXHIBIT C**

**Form of Security**

## **EXHIBIT D**

### **Description of License Area**

The incorporated areas of the Town of Paradise Valley, Arizona and all of the territory within its corporate boundaries as such may change from time to time.

**CITY CLERK  
ORIGINAL**

C-5528  
12/0705

**LICENSE AGREEMENT  
FOR WIRELESS COMMUNICATIONS SITE  
IN CITY RIGHT-OF-WAY**

This License Agreement ("this Agreement") is executed to be effective the 7th day of December, 2005 (the "Effective Date"), between the City of Glendale, an Arizona municipal corporation (the "City"), and NewPath Networks, LLC, a New Jersey limited liability company, ("the Licensee").

WHEREAS, the City is the owner of certain traffic light poles located on Glendale Avenue between 91<sup>st</sup> Avenue and 95<sup>th</sup> Avenue for use pursuant to this Agreement and which are more particularly described in the site plan ("Site Plan") attached as Exhibit A; and

WHEREAS, the Licensee desires to install and operate wireless communication antennas and related equipment specified in Section 1 below (collectively referred to as the "Communication Equipment") in the License Area and to construct certain improvements to the License Area, as depicted in the Site Plan; and

WHEREAS, the City is willing to grant to the Licensee a license to use the License Area for the operation of the Communication Equipment, and the transmission and reception of communication signals, subject to the requirements of this Agreement.

THEREFORE, in consideration of the following mutual covenants and conditions, it is hereby agreed as follows:

1. LICENSE AREA.

The License Area includes and is limited to the following areas depicted in the Site Plan:

- A. The Traffic Light Pole located at the Southeast corner of 91<sup>st</sup> Avenue and Glendale Avenue, to be used solely for not more than six panel antennas (the "Antennas") that are to be attached to the pole. The antennas will be consistent in size, placement and design as approved by the Planning Department. Any reference to the Pole herein shall include any replacement pole to be constructed by the Licensee. Approximately 10 square feet of land located approximately at the base of the pole, to be used solely for locating utility cabinets housing electronic switching and equipment related to the use of the Antennas as depicted in Exhibit A and approved by the Planning Department. The cabinets, new or replacements, shall be vaulted below grade.
- B. The Traffic Light Pole located at the Northeast corner of 95<sup>th</sup> Avenue and Glendale Avenue, to be used solely for not more than six panel antennas (the "Antennas") that are to be attached to the pole. The antennas will be consistent in size, placement and design as approved by the Planning Department. Any reference to

the Pole herein shall include any replacement pole to be constructed by the Licensee. Approximately 10 square feet of land located approximately at the base of the pole, to be used solely for locating utility cabinets housing electronic switching and equipment related to the use of the Antennas as depicted in Exhibit A and approved by the Planning Department. The cabinets, new or replacements, shall be vaulted below grade.

- C. An underground conduit and cable route for a ground signal conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the base of the Pole to the Licensee's ground equipment.
- D. An underground conduit and cable route for an electrical service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the nearest available power source to the ground equipment.
- E. An underground conduit and cable route for a telephone service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City.

2. CITY'S REPRESENTATIONS AND WARRANTIES.

- A. The City represents and warrants to the Licensee that: (1) the City has full right, power and authority to execute this Agreement; (2) the City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with the Licensee's right to use the License Area; and (3) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.
- B. The Licensee has studied and inspected the License Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in subsection (A), including any warranties or representations by the City as to its condition or fitness for any use. The Licensee has inspected the License Area and its environs and obtained such information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM; TERMINATION WITHOUT CAUSE

The City grants to the Licensee the right to use the License Area subject to the following provisions and conditioned upon the Licensee's timely and complete performance of all of its obligations hereunder:

- A. As a condition precedent of this License taking effect, the Licensee shall obtain the approval of all property owners, including A.P.S. upon whose consent the Licensee's lawful operation of the Communication Equipment may be contingent.

Nothing in this Agreement shall be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.

- B. The term of this Agreement shall be for a period of 10 years, commencing on the Effective Date and ending on January 8, 2012 unless sooner terminated as hereinafter set forth. Notwithstanding anything in this Agreement to the contrary, each party shall have the right, in its sole discretion and without cause, to terminate this Agreement by giving the other party one year's written notice at any time after the first year of this Agreement.
- C. In any circumstance whereby the Licensee would continue to occupy the License Area after the expiration or termination of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, and the Licensee shall pay the City rent in an amount that is double the amount of rent otherwise due under Section 4 for such hold-over period.
- D. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, the Licensee's rights in the License Area are limited to the license rights created by this Agreement, which creates only a revocable license in the License Area. The City and the Licensee do not by this instrument intend to create a lease, easement or other real property interest. The Licensee shall have no real property interest in the License Area. The Licensee's sole remedy for any breach or threatened breach of this Agreement by the City shall be an action for damages. The Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the License Area. Notwithstanding the preceding sentence, the City shall provide to the Licensee peaceable use and enjoyment of the License Area in accordance with the terms of this Agreement. The Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use thereof.

4. RENT.

- A. As rent for its right to use the License Area, the Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, rent in the amount of \$900.00 per pole, per month (\$1,800) plus all appropriate taxes from the earlier of (i) one hundred eighty (180) days from the Effective Date, or (ii) the date upon which Licensee commences installation of Communication Equipment. Licensee shall pay rent to and including the expiration or earlier termination of this Agreement.

- B. The Licensee's rent shall be increased each year on January 1, beginning on January 1, 2007, by the Consumer Price Index ("CPI") for the Western Region (All Cities and All Urban Consumers), as prepared by the U. S. Department of Labor, Bureau of Labor Statistics, using the current index base period. If such CPI is discontinued, a comparable CPI shall be substituted therefor. Each adjustment shall be based on the latest available 12-month CPI period as of December 1.
- C. The Licensee shall pay the rent due for the current month in advance on the first day of each month. If the Effective Date is not on the first day of a month, the Licensee's first and last month's rent shall be prorated accordingly.
- D. If the Licensee fails to pay any rent in full within five (5) business days of the due date, the Licensee shall be responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment in full is made.

5. UTILITIES.

The Licensee shall be responsible for obtaining and paying for all utilities necessary to operate the Communication Equipment.

6. USE RESTRICTIONS.

The Licensee's use and occupation of the License Area shall conform to all of the following provisions:

- A. The Licensee shall at all times use its commercially reasonable best efforts to minimize any impact that its use of the License Area will have on other uses of the Right-of-Way.
- B. The Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the License Area without the City's prior written approval. The Licensee shall repair any damage or alteration to the City's property to the same condition that existed before the damage or alteration.
- C. Whenever the Licensee disturbs the Right-of-Way as a result of its construction or use of the same, the Licensee shall obtain all necessary construction permits and shall promptly restore the Right-of-Way to the satisfaction of the City Engineer. If the Licensee fails to restore the Right-of-Way as required, the City may take all actions necessary to restore the Right-of-Way, and the Licensee shall pay all of the City's reasonable costs of such restoration upon demand.
- D. The Licensee shall use the License Area solely for constructing, installing, operating, maintaining and repairing the Communication Equipment. The Communication Equipment is limited to the Antennas and the conduits and cables

listed in Section 1 above and such other items as may be approved by the City, in its sole discretion, in writing.

- E. The Licensee shall have a non-exclusive right for ingress and egress, seven days a week, 24 hours a day, for the construction, installation and maintenance of the Communication Equipment. In no event shall the City's use of the Right-of-Way be unreasonably interrupted by the Licensee's work. Prior to entering upon the License Area, the Licensee shall give the City Engineer at least five regular business day's advance notice in the manner provided in paragraph 21 of this agreement or, in the event of emergency repairs, such prior notice as may be practical.
- F. The Licensee shall at all times have on call and at the City's access an active, qualified and experienced representative to supervise the Communication Equipment, who shall be authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Communication Equipment. The Licensee shall provide the City's Regulatory & Communications Manager with the names, addresses and 24-hour telephone numbers of such persons in writing.
- G. The Licensee shall operate the License Area in a first-class manner and shall keep the License Area attractively maintained, orderly and clean at all times.
- H. The Licensee acknowledges that the Licensee's use of the License Area shall be subject and subordinate to the City's use of the Right-of-Way. The Licensee's use of the License Area shall not adversely affect the City's use of the Right-of-Way. Subject to Section 11(B) below, the City reserves the right to further develop, maintain, repair or improve the Right-of-Way as it sees fit, regardless of the desires of the Licensee, and without interference or hindrance.
- I. The Licensee shall not install, operate or allow its agents, employees, or contractors to use any equipment, methodology or technology that may interfere with the optimum effective use or operation of the City's fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data receiving and/or transmitting equipment) that is presently in use or may be in use in the future. If such interference occurs, the Licensee shall immediately discontinue using such equipment, methodology or technology that causes the interference until corrective measures are taken. Any such corrective measures shall be made at no cost to the City. If the City installs any fire, emergency or communication equipment in or near the Right-of-Way, the Licensee will take reasonable corrective measures to avoid interference problems between the Licensee's Communication Equipment and the City's equipment. The City and the Licensee shall promptly use their best reasonable efforts to resolve any interference problems; provided that if the interference problems are unavoidable, the City's right to use the City's own equipment remains paramount to any use of the License Area by the Licensee and Licensee shall have the right to terminate this Agreement without penalty.

- J. The Licensee shall not install any signs in the Right-of-Way other than required safety warning signs or such other signs as are requested or approved by the City. The Licensee shall bear all costs pertaining to the erection, installation, maintenance and removal of all signs.

7. HAZARDOUS WASTE.

The Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances. The Licensee shall not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the Right-of-Way attributable to or caused in any way by the Licensee, and shall immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the Right-of-Way. The Licensee shall promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the Right-of-Way.

8. THE LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

The following provisions shall govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Communication Equipment or the License Area (collectively referred to as "the Licensee's Improvements"):

- A. All of the Licensee's Improvements shall be designed and purchased at the Licensee's sole expense. In no event, including termination of this Agreement for any reason, shall the City be obligated to compensate the Licensee in any manner for any of the Licensee's Improvements or other work provided by the Licensee during or related to this Agreement. The Licensee shall timely pay for all such labor, materials and work and all professional and other services related thereto and shall defend, indemnify and hold harmless the City against all such claims.
- B. All work performed on the License Area by the Licensee shall be performed in a workmanlike manner, as reasonably determined by the City, and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of the Licensee's Improvements shall be high quality, safe, modern in design

and attractive in appearance, all as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

- C. The Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except to the extent expressly stated in this Agreement.
- D. The Licensee shall make no structural or grading alterations, modifications, additions or other significant construction work to the License Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Such review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to colors, materials, site plan, design, function and appearance.
- E. The Licensee shall keep as-built records of the Licensee's Improvements and shall furnish copies of such records to the City, at no cost to the City, upon completion of such improvements and any changes to the same. The Licensee shall participate as a member of the Blue Stake Center under A.R.S. Sec. 40-360.21 et seq. regarding underground facilities, and the Licensee shall submit proof of such participation to the City Engineer upon request.
- F. All changes to utility facilities shall be limited to the License Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- G. All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Right-of-Way. The color of the Antennas shall match the color of the Pole.
- H. The following procedure shall govern the Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
  - 1. The Licensee shall coordinate with the City as necessary on significant design issues prior to preparing plans to be submitted hereunder.
  - 2. Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing the Licensee's Improvements. Each project manager shall devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project

manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.

3. No plans shall be deemed approved until stamped "APPROVED" and dated by the City's project manager.
4. No final plans shall be deemed approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona acceptable to the City to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. Such certification shall be accompanied by and refer to such backup information and analysis as the City may reasonably require.
5. The Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. The Licensee shall be responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and shall not rely on the City or the City's project manager for any of the same.
6. The City's issuance of building permits shall not constitute approval of any plans for purposes of this Agreement. The City's project manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.
7. The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.
8. If the City does not timely review the Licensee's plans, mark the Licensee's plans with changes necessary in order to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, the City's failure to timely process such plans shall not be deemed to be an approval of the plans but shall operate to extend the Licensee's construction deadlines. The City agrees to use its best reasonable efforts to review, mark and/or approve the Licensee's plans.
9. The Licensee shall provide the City with two complete sets of detailed plans and specifications of the work as completed.
10. The parties shall use their best reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its reasonable discretion.

- I. Prior to the commencement of any construction on the License Area, the Licensee shall provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Each bond shall be executed by a surety company duly authorized to do business in Arizona and acceptable to the City.

9. THE LICENSEE'S INITIAL CONSTRUCTION.

No later than six months after the effective date, the Licensee shall install the Communication Equipment on the License Area and on the Pole in accordance with all of the specifications contained in Exhibit A attached hereto.

10. MAINTENANCE.

The Licensee shall, at its own cost, have all responsibilities for improvements to and maintenance of the License Area during the term of this Agreement.

Licensee, at Licensee's expense, shall use commercially reasonable efforts to minimize the visual and aesthetic impacts of the wireless equipment. This shall include, but not be limited to, replacing existing ground equipment with smaller equipment, decreasing the area used to house the ground equipment, decreasing the size of wireless antenna panels, and/or replacing equipment with equipment having greater "stealth" properties.

11. CO-LOCATION.

- A. Subject to subsection B, the Licensee shall at all times use its best reasonable efforts to cooperate with the City and/or any third parties with regard to the possible co-location of additional communication equipment in the Right-of-Way. If such co-location is feasible, the City shall have the right, in its sole discretion, to negotiate a co-location license agreement with any third party on such terms as the City deems appropriate, not inconsistent with the rights and obligations of the parties under this Agreement, and the City shall not need the Licensee's approval for the same. Any rent or fees paid by an additional co-locator shall belong solely to the City.
- B. Prior to permitting the installation by any third party in the Right-of-Way of any additional communication equipment which may interfere with the Licensee's

operation of the Communication Equipment, the City shall give the Licensee 30 days notice of such proposed additional equipment so that the Licensee can determine if the additional equipment will interfere with the Communication Equipment. If the Licensee determines that such interference is likely to occur, the Licensee shall, within the 30-day notice period, give the City a detailed written explanation of the anticipated interference, including such supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use their best reasonable efforts to resolve any interference problems before the City permits the third party to operate its proposed equipment. In the event a subsequent licensee is permitted to operate in or near the Right-of-Way or the Pole, and such subsequent licensee's operations interfere with Licensee's Communication Equipment (as operating and configured prior to the subsequent licensee's start of operations or any subsequent approved reconfiguration), then the City shall direct such subsequent licensee to remedy such interference within seventy-two (72) hours. If such interference is not resolved within this 72-hour period, then the subsequent licensee shall power down its equipment and may power up its equipment only for test purposes until the interference is resolved. These same procedures shall apply to (i) any interference caused by Licensee with respect to equipment existing and as configured on the Effective Date, and (ii) any licensee equipment existing on the Effective Date which is later reconfigured so as to interfere with Licensee's Communication Equipment.

12. ASSIGNMENT.

- A. The Licensee may assign this Agreement, upon 30 days written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee, or to any person or entity that, after first receiving all necessary F.C.C. and/or State regulatory agency approvals, acquires the Licensee's radio communications business and assumes all obligations of the Licensee under this Agreement. The City may, as a condition of approval, require that any potential transferee submit biographical and financial information to the City at least 60 days prior to any transfer of the Licensee's interest.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Communication Equipment, and may assign this Agreement and the Communication Equipment to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), provided such Mortgagees agree to be bound by the terms of this Agreement. In such event, the City shall execute such consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in the Real Property of the License Area.

- C. Subject to subsections (A) and (B), the Licensee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

13. PERFORMANCE BOND.

In addition to any other bond required by this Agreement, the Licensee shall, no later than the Effective Date, provide the City with a cash deposit, letter of credit or performance bond in the amount of \$10,000. The performance bond shall be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement. The bond shall be executed by a surety company duly authorized to do business in Arizona and acceptable to the City's Risk Manager.

14. RECORDS RE: REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall provide to the City:
1. All relevant petitions, applications, communications and reports submitted by the Licensee to the F.C.C., or any other Federal or State regulatory commission or agency having jurisdiction that directly relates to the Licensee's communications equipment in the City;
  2. All licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over such facilities. Copies of responses from such regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law (A.R.S. Sec. 39-121 et seq.), the City shall treat all documentation and information obtained pursuant to this Subsection as proprietary.
- B. The Licensee shall provide the City, without request, with copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship;

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement by giving the Licensee 30 days written notice after the happening of any of the following events:
1. The failure of the Licensee to perform any of its obligations under this Agreement, provided that the Licensee fails to cure its default within said 30-day notice period, and provided further that if such cure cannot reasonably be implemented within such 30-day period, then if Licensee fails to cure its default within 90 days of the City's notice provided that Licensee initiates a

cure within the original 30-day period and thereafter diligently pursues such cure;

2. The taking of possession for a period of 10 days or more of substantially all of the personal property used in the License Area belonging to the Licensee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;
  3. The filing of any lien against the Right-of-Way because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee 15 days written notice of the Licensee's failure to timely pay the rent provided for herein or any other charges required to be paid by the Licensee pursuant to this Agreement. During said 15-day notice period, the Licensee shall cure said default; otherwise, the City may elect to terminate this Agreement or to exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City shall have the right, upon written notice to the Licensee, to immediately terminate this Agreement or to secure the required insurance at the Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party of any of such other party's obligations hereunder shall not constitute a waiver of said default nor of any subsequent default by the other party. Acceptance of rent and other fees by the City under the terms hereof for any period after a default by the Licensee of any of its obligations shall not be deemed a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee shall terminate, including all rights of the Licensee's creditors, trustees and assigns, and all others similarly situated as to the License Area.

#### 16. TERMINATION.

Either party may terminate this Agreement at any time that it is not in default in its obligations by giving the other party written notice after the happening of any of the following events:

- A. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and the remaining in force of such injunction for a period of 30 consecutive days.

- B. The inability of the Licensee to use any substantial portion of the License Area for a period of 30 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
- C. Upon 90 days written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary to the construction, installation or operation of the Communication Equipment or the Licensee's business.
- D. Upon 90 days written notice, if the License Area or the Communication Equipment is unacceptable under the Licensee's design or engineering specifications for the communication system to which the Communication Equipment belongs.
- E. If the License Area or the Communication Equipment are destroyed or damaged so as in either party's reasonable judgment to substantially and adversely affect the use of the Communication Equipment.

17. INDEMNIFICATION.

The Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Licensee or its agents, employees and invitees (hereinafter referred to collectively as "the Licensee" in this Section) in connection with the Licensee's operations in the Right-of-Way and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of the Licensee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the negligence or fault of the City, be indemnified by the Licensee against all such loss, damages or claims. The City shall give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this Section, and the Licensee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder. The Licensee's obligations hereunder shall survive any termination of this Agreement or the Licensee's activities in the Right-of-Way.

18. INSURANCE.

The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Right-of-Way:

- A. Commercial general liability and property damage insurance in the amount of \$1,000,000 combined single limit and catastrophic umbrella insurance in the amount of \$2,000,000 combined single limit in excess of the \$1,000,000 underlying coverage.
- B. Such other insurance as the City's Risk Manager determines to be necessary for the Licensee's operations.

Such insurance shall be in a form, from a company and with deductibles acceptable to the City's Risk Manager; shall name the City as an additional insured; and shall require 30 days written notice to the City before modification or termination. The insurance must also include contractual liability coverage for the obligation of indemnity assumed in this Agreement. The Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section.

19. DAMAGE OR DESTRUCTION.

The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for such loss or damage as is caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and exercise the privileges and rights herein granted shall cease, and it shall surrender and leave the License Area in good condition, normal wear and tear excepted. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area shall remain the property of the Licensee, and the Licensee shall have the right at any time during the term of this Agreement, and for an additional period of 90 days after its expiration, to remove the same from the License Area; provided that the Licensee is not in default of any of its obligations hereunder and that the Licensee shall repair, at its sole cost, any damage caused by such removal. Any property not removed by the Licensee within said 90-day period shall become a part of the Right-of-Way, and ownership thereto shall vest in the City; or the City may, at the Licensee's expense, have the property removed.

21. NOTICE.

Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY:

City of Glendale  
Attention: Regulatory & Communications Manager  
5850 W. Glendale Avenue, Suite 104

Glendale, AZ 85301

WITH A COPY TO: City of Glendale  
Attention: City Attorney  
5850 West Glendale Avenue, Suite 450  
Glendale, AZ 85301

TO THE LICENSEE : NewPath Networks, LLC  
Attn: Michael J. Kavanagh  
1300 N. Northlake Way  
Seattle, WA 98103

WITH A COPY TO: Barry G. Ziker  
Salter Joyce Ziker, PLLC  
1601 Fifth Avenue, Suite 2040  
Seattle, WA 98101

Any notice given by certified mail shall be deemed to be received on the third business day after the date of mailing. Either party may designate in writing a different address for notice purposes pursuant to this Section.

22. SEVERABILITY.

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of such material prejudice, then the adversely affected party may terminate this License.

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, such tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.
- B. The Licensee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

24. LITIGATION.

This Agreement shall be governed by the laws of the State of Arizona. In the event of any litigation or arbitration between the City and the Licensee arising under this Agreement, the

successful party shall be entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration.

25. RULES AND REGULATIONS.

The Licensee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the Right-of-Way, including all laws, ordinances, rules and regulations adopted after the Effective Date. The Licensee shall display to the City, upon request, any permits, licenses or other evidence of compliance with such laws.

26. RIGHT OF ENTRY RESERVED.

- A. The City shall have the right at all times to enter upon the License Area for any lawful purpose, provided such action does not unreasonably interfere with the Licensee's use or occupancy of the License Area and that the City shall have access to the Communication Equipment itself only in emergencies or upon reasonable advance notice to the Licensee.
- B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the License Area at all times to make such repairs, replacements or alterations thereto that may, in the opinion of the City, be deemed necessary or advisable and from time to time to construct or install over, in or under the License Area such systems or parts thereof and, in connection with such maintenance, use the License Area for access to other parts of the Right-of-Way; provided that in the exercise of such right of access, repair, alteration or new construction, the City shall not unreasonably interfere with the use and occupancy of the License Area by the Licensee.
- C. Exercise of any of the foregoing rights by the City or others pursuant to the City's rights shall not constitute an eviction of the Licensee, nor be made the grounds for any abatement of rent or any claim for damages.

27. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

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STATE OF Washington )  
County of King ) ss.

The foregoing document was acknowledged before me this 7 day of December  
2006 by Michael Kavanaugh, in his or her capacity as CEO  
of NewPath Networks, LLC, a New Jersey limited liability company.

Wendy Endres  
Notary Public

My Commission Expires:

Jan. 2, 2008



(EXHIBIT A)

[Attach copy of approved Site Plan pursuant to 1st recital and Section 1.

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