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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

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Arizona Corporation Commission

DOCKETED

MAR 15 2017

DOCKETED BY

T-02847A-17-0071

COMMISSIONERS

TOM FORESE, Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

IN THE MATTER OF THE APPLICATION
OF ACCIPITER COMMUNICATIONS
INCORPORATED, DOING BUSINESS AS
ZONA COMMUNICATIONS, TO EXTEND
ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. T-02847A-17-
APPLICATION OF ACCIPITER
COMMUNICATIONS
INCORPORATED TO EXTEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY

Pursuant to A.R.S. §§ 40-281 and 40-282 and Arizona Administrative Code ("A.A.C.") R14-2-502, Accipiter Communications Incorporated, doing business as Zona Communications ("Zona" or the "Company") requests that the Arizona Corporation Commission ("Commission") extend its certificate of convenience and necessity ("CC&N") to include Section 27, Township 5 North, Range 1 West, G&SRB&M ("Extension Area"), which is currently within the service territory of Qwest Corporation d/b/a CenturyLink-QC ("CenturyLink"). Specifically, Zona requests that the Commission issue its order:

- (i) Removing the Extension Area from CenturyLink's service area and extending Zona's CC&N to include the Extension Area;
- (ii) Authorizing Zona to charge the rates and charges in the Extension Area that are set forth in the Company's existing tariff on file with and approved by the Commission; and
- (iii) Stating that the Commission does not object to the grant of a waiver by the Federal Communications Commission ("FCC") of Zona's study area boundary freeze that would allow Zona to add the Extension Area to its study area.

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I. INTRODUCTION

Zona is a Nevada corporation authorized to do business in Arizona as a foreign corporation. Pursuant to Decision 59346 dated October 11, 1995, Zona received a CC&N to provide local exchange carrier and other telecommunication services in portions of the municipalities of Peoria, Surprise and Buckeye, as well as additional portions of Maricopa and Yavapai Counties, including Lake Pleasant Regional Park and the Castle Hot Springs area. Subsequent extensions and/or modifications of Zona’s CC&N were approved in Decision 67574 (February 15, 2005), Decision 67675 (March 9, 2005) and Decision 70641 (December 17, 2008). Zona currently provides service to approximately 2,200 customer accounts in a CC&N area covering approximately 1,000 square miles. Zona is a rural exchange carrier as defined by the FCC.

On March 28, 2014, Zona filed a voluntary petition in the Bankruptcy Court, District of Arizona (Case No. 2:14-BK-04372-GBN) to restructure its debt under Chapter 11 of the Federal Bankruptcy Code. Since filing the petition, Zona has operated its telecommunications business as a debtor-in-possession under applicable provisions of the Federal Bankruptcy Code. On December 15, 2016, the Bankruptcy Court issued *Findings of Fact, Conclusions of Law and Order Confirming Second Amended Chapter 11 Plan of Reorganization proposed by Pinpoint Holdings, Inc., and the Official Committee of Unsecured Creditors* (the “Bankruptcy Order”). Pursuant to the Bankruptcy Order, Pinpoint Holdings, Inc., a Nebraska corporation (“Pinpoint”) will pay \$5,250,000 (the “Purchase Price”) as set forth in the *Second Amended Chapter 11 Plan of Reorganization*, and new common stock will be issued by Zona to Pinpoint, which will thereafter own 100% of the Company’s common stock. To fund the purchase of the new common stock, Pinpoint will obtain a loan from McCook National Bank in the amount of \$4,000,000 and the loan will be secured by the assets of Zona. Zona has sought Commission approval to encumber its assets in Docket T-02847A-16-0482 which is pending at this time. Once this approval is obtained, Zona will be able to exit bankruptcy.

1 Since filing bankruptcy, Zona has self-funded its continuing subscriber growth and has
2 accumulated approximately \$2.1 million in cash. Zona is currently in good standing with the
3 Commission and the Company has no outstanding complaints with consumer services.

4 II. REQUESTED EXTENSION AREA

5 Zona provides facilities-based local exchange and other telecommunications services to
6 portions of the Vistancia and Trilogy master planned developments in northwest Peoria. In this
7 area, Zona's CC&N borders the service area of CenturyLink.¹ Zona has received requests for
8 service from two developers who are constructing residential subdivisions in this area known as
9 Trilogy West (approximately 357 acres) and Sonoran Place (approximately 39 acres).
10 Specifically, the developments are located within Section 27, Township 5 North, Range 1 West,
11 G&SRB&M, which is adjacent to but outside of Zona's existing CC&N. Copies of the requests
12 for service² are attached hereto as Attachment 1.

13 Upon information and belief, the Trilogy West and Sonoran Place developments that are
14 included within the Extension Area are currently within CenturyLink's service territory.
15 However, upon information and belief, CenturyLink has no telecommunications infrastructure
16 within or near the Extension Area and has expressed no interest in serving the two developments
17 that have requested service from Zona. Zona, on the other hand, has existing infrastructure in the
18 immediate vicinity of the two developments which can easily and quickly be extended to serve
19 the developments. Further, service to the requested Extension Area is a natural and logical
20 extension of Zona's network in the area. Zona is ready, willing and able to provide service in the
21 Extension Area.

22 In the past, Zona and CenturyLink have worked cooperatively to facilitate service in the
23 most expeditious and cost-effective way to customers in developing areas where the two
24 companies share a common border. For example, the companies worked together in Dockets T-
25 02847A-08-0164 and T-01051B-08-0164 (Decision 70641) to realign their respective service area

26 _____
27 ¹ Zona's initial grant of a CC&N pursuant to Decision 59346 (October 11, 1995) was for territory
transferred from US WEST Communications, Inc. (predecessor-in-interest to CenturyLink) to Zona.

28 ² Please note that the date on the request for service from the developer of Trilogy West is in error. The
date of the letter should be December 22, 2016 as opposed to December 22, 2015.

1 boundaries. Zona anticipates that CenturyLink will again work cooperatively in this docket to
2 ensure that service is extended to customers in an expeditious and cost-effective way. A copy of
3 this application has been sent via e-mail and U.S. Mail to CenturyLink at the address set forth
4 below.

5 Zona requests that its CC&N be extended to include Section 27, Township 5 North, Range
6 1 West, G&SRB&M. Zona further requests that the Extension Area be removed from
7 CenturyLink's service territory. Upon information and belief, CenturyLink has no
8 telecommunications infrastructure and no customers within the Extension Area.

9 The information required for an extension of a CC&N as set forth in A.R.S. §§ 40-281 and
10 40-282 and A.A.C. R14-2-502 is provided in Section III below.

11 **III. INFORMATION SUPPORTING APPLICATION**

12 Zona is a Subchapter "S" corporation incorporated in Nevada and registered as a foreign
13 corporation in Arizona. The business address and contact information for Zona are as follows:

14 Accipiter Communications Incorporated
15 d/b/a Zona Communications
16 2238 W. Lone Cactus Drive, Suite 100
17 Phoenix, Arizona 85027
18 Phone: (623) 455-4500
19 Fax: (623) 455-4545
20 Website: www.zonacommunications.com

21 Patrick Sherrill is the President and Chief Executive Officer of Zona. Melissa Rosenecker
22 is Zona's Secretary. Zona's management team has many years of experience in the
23 telecommunications industry and a well-established track record in Arizona. Thus, Zona has the
24 technical and managerial expertise to provide the requested service within the Extension Area.

25 A copy of Zona's Articles of Incorporation are attached hereto as Attachment 2.

26 Zona requests authority to charge its existing rates and charges within the Extension Area.
27 A copy of Zona's current tariff is on file with the Commission.

28 Copies of Zona's balance sheet and income statement are confidential and will be provided
to Utilities Division Staff pursuant to a protective agreement once that has been executed by the
parties. As stated above, Zona is currently operating under the protection of the Federal

1 Bankruptcy Court. Notwithstanding, Zona has self-funded its subscriber growth throughout the
2 bankruptcy and has accumulated approximately \$2.1 million in cash on its balance sheet. Zona
3 submits that it has the financial wherewithal to fund the telecommunications infrastructure
4 necessary to serve the Extension Area.

5 Maps showing the requested Extension Area are attached hereto as Attachment 3. The
6 areas to be served are generally residential subdivisions.

7 The Extension Area is located within the municipal boundaries of the City of Peoria. A
8 copy of Zona's Telecommunications License Agreement with the City of Peoria dated October
9 11, 2016 is attached hereto as Attachment 4. The Extension Area is not currently included in the
10 license agreement. The City of Peoria will not extend the boundaries of the license agreement to
11 include the Extension Area until the Commission has extended Zona's CC&N. Thus, Zona will
12 obtain an appropriate extension of the license agreement as a compliance item following the
13 extension of its CC&N. No other regulatory authorizations or permits are required.

14 Zona estimates that the total number of customers to be served in the Extension Area in
15 each of the first five years of operation are:

16	Year 1	200 customers
17	Year 2	400 customers
18	Year 3	600 customers
19	Year 4	650 customers
20	Year 5	700 customers

21 Zona is requesting that the Commission confirm that it does not object to the grant of a
22 waiver by the FCC of Zona's study area boundary freeze that would allow Zona to add the
23 Extension Area to its study area. The FCC froze study area boundaries as of November 15, 1984,
24 in order to prevent holding companies from setting up high cost exchanges as separate companies
25 within the holding companies' existing territories to maximize high-cost support. In reviewing
26 study area waiver petitions, the FCC considers: (i) whether the change in a study area boundaries
27 will adversely affect the federal Universal Serviced Fund ("USF"); (ii) whether a state commission
28 with regulatory authority over a transferred area has opposed the transfer; and (iii) whether the

1 transfer of the area is in the public interest. Zona and CenturyLink each have only one study area
2 in Arizona.

3 A study area waiver would allow Zona to include the Extension Area within its study area
4 and, by extension, in its cost study. Without a waiver, Zona would be required to make a separate
5 cost study for the Extension Area, would not be able to receive federal USF on its costs, and would
6 be required to file separate National Exchange Carrier Association tariffs for the Extension Area,
7 all of which would be administratively burdensome.

8 While the study area waiver will ultimately allow Zona to receive federal USF for the
9 Extension Area, because there are no CenturyLink customers or CenturyLink facilities in the
10 Extension Area, there will be no immediate impact on the federal USF if the application in this
11 docket is approved. Thus, Zona submits that its request that the Commission confirm that it does
12 not object to the study area waiver is reasonable and should be approved.

13 Zona will provide notice of this application to each landowner within the Extension Area.
14 Zona shall also provide such other public notice as the Commission may direct.

15 There is a demonstrated need and necessity for local exchange service and other
16 telecommunications services within the Extension Area. Zona has the requisite technical
17 expertise, managerial expertise and financial wherewithal to provide the requested service in the
18 Extension Area. Upon information and belief, CenturyLink has no infrastructure within the
19 Extension Area and no interest in serving customers within the Extension Area. Thus, Zona is
20 best situated to provide the requested service in the most expeditious and cost-effective way.
21 Approving this application and extending Zona's CC&N to include the Extension Area is in the
22 public interest.

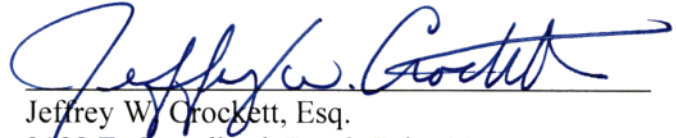
23 **IV. CONCLUSION**

24 For all of the reasons set forth above, Zona requests that the Commission issue its order:
25 (i) removing the Extension Area from CenturyLink's service territory and extending Zona's CC&N
26 to include the Extension Area; (ii) authorizing Zona to charge the rates and charges in the
27 Extension Area that are set forth in the Company's existing tariffs on file with and approved by
28 the Commission; and (iii) stating that the Commission does not object to the grant of a waiver by

1 the FCC of Zona's study area boundary freeze that would allow Zona to add the Extension Area
2 to its study area.

3 RESPECTFULLY submitted this 15th day of March, 2017.

4 CROCKETT LAW GROUP PLLC

5 
6

7 Jeffrey W. Crockett, Esq.
8 2198 E. Camelback Road, Suite 305
9 Phoenix, Arizona 85016-4747
Attorney for Accipiter Communications, Inc.,
d/b/a Zona Communications

10 ORIGINAL and thirteen (13) copies filed
11 this 15th day of March, 2017, with:

12 Docket Control
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 COPY of the foregoing sent via e-mail and
17 U.S. Mail this 15th day of March, 2017, to:

18 Norman G. Curtright, Associate General Counsel
19 QWEST CORPORATION D/B/A CENTURLINK-QC
20 20 East Thomas Road, 1st Floor
21 Phoenix, Arizona 85012

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ATTACHMENT 1

Vistancia West Construction, LP
8800 N. Gainey Center Dr., Ste 370
Scottsdale, Arizona 85258

December 22, 2015

Patrick Sherrill, President and CEO
Accipiter Communications, Inc.
d/b/a Zona Communications
2238 W. Lone Cactus Drive, Suite 100
Phoenix, Arizona 85027
E-mail: psherrill@teamzona.com

Re: Request for Telecommunications Services and Consent to be Included in the Certificate of Convenience and Necessity of Zona Communications

Dear Patrick:

Vistancia West Construction, LP is the owner of 358 acres of land (the "Property") located in Section 27, Township 5 North, Range 1 West, G&SRB&M. A map and legal description of the Property are attached to this letter. Vistancia West Construction, LP is developing the Property as a master-planned residential subdivision known as Trilogy West and requests that Accipiter Communications, Inc. d/b/a Zona Communications provide telecommunications services to the Property. Vistancia West Construction, LP understands that Zona Communications will need to apply for and obtain an extension of its Certificate of Convenience and Necessity ("CC&N") before it can serve the Property. Vistancia West Construction, L hereby consents to the inclusion of its Property in the CC&N of Zona.

Sincerely,



Bob Williams
Authorized Agent



Joan Scarbrough
Authorized Agent

LEGAL DESCRIPTION FOR
TRILOGY WEST

That part of Sections 22, 23 and 27, Township 5 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the Maricopa County Aluminum Cap marking the East Quarter Corner of said Section 27;

Thence North $89^{\circ}43'03''$ West, along the South line of the Northeast Quarter of said Section 27, a distance of 2,634.31 feet to the 1/2" Rebar with cap LS#22782 marking the Center of said Section 27;

Thence North $00^{\circ}13'52''$ East, along the West line of the Northeast Quarter of said Section 27, a distance of 2,638.20 feet to the G.L.O. Brass Cap marking the South Quarter Corner of said Section 22;

Thence North $00^{\circ}10'13''$ East, along the West line of the Southeast Quarter of said Section 22, a distance of 2,641.74 feet to the Aluminum Cap marked LS#36113 marking the Center of said Section 22;

Thence South $89^{\circ}42'34''$ East, along the North line of the Southeast Quarter of said Section 22, a distance of 2,636.21 feet to the G.L.O. Brass Cap marking the West Quarter Corner of said Section 23;

Thence South $89^{\circ}41'28''$ East, along the North line of the Southwest Quarter of said Section 23, a distance of 1,255.89 feet to a point on the Westerly right-of-way line of Vistancia Boulevard, as dedicated in Document No. 2006-1150898, Records of Maricopa County, Arizona;

Thence South $00^{\circ}14'08''$ West, along said Westerly right-of-way line, a distance of 1,319.76 feet to a point on the South line of the Northwest Quarter of the Southwest Quarter of said Section 23;

Thence North $89^{\circ}41'33''$ West, along said South line, a distance of 1,255.62 feet to the 1" Iron Pipe with tag LS#22782 marking the Southwest Corner of the Northwest Quarter of the Southwest Quarter of said Section 23;

Thence South $00^{\circ}13'26''$ West, along the East line of the Southeast Quarter of said Section 22, a distance of 1,319.98 feet to the Northeast Corner of said Section 27;

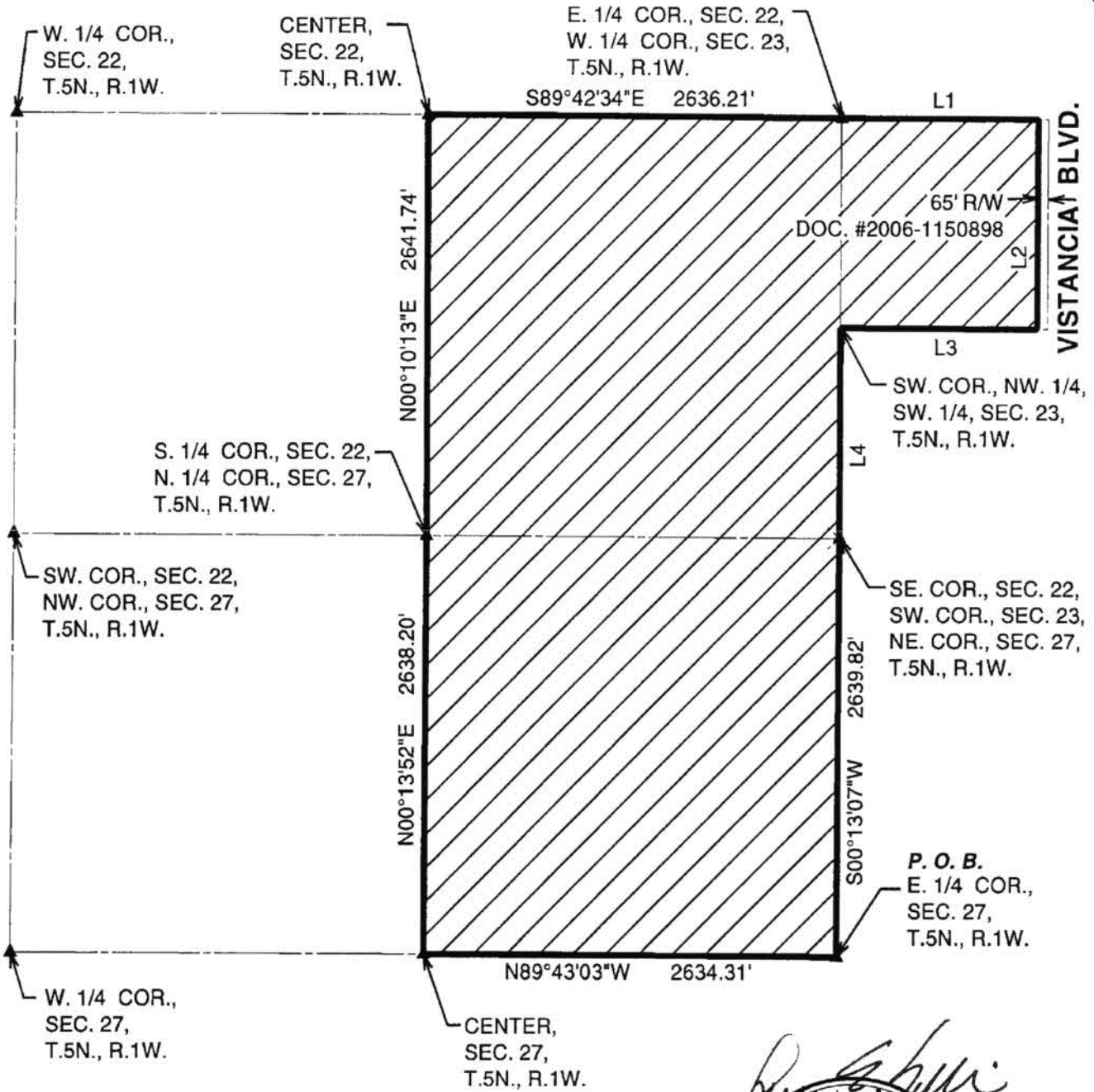
Legal Description for
Trilogy West
December 8, 2014

Thence South 00°13'07" West, along the East line of the Northeast Quarter of said Section 27, a distance of 2,639.82 feet to the Point of Beginning.

Containing 357.365 Acres, more or less.



Expires 6/30/2016



SCALE: 1" = 1000'

LINE TABLE

LINE	BEARING	DISTANCE
L1	S89°41'28"E	1255.89'
L2	S00°14'08"W	1319.76'
L3	N89°41'33"W	1255.62'
L4	S00°13'26"W	1319.98'



<p>EXHIBIT</p> <p>N:\07\0218101\CADD\EHLGTOTAL.DGN</p> <p>4550 NORTH 12TH STREET PHOENIX, ARIZONA 85014 TELEPHONE (602) 264-6831</p>	<p>TRILOGY WEST</p> <p>COE & VAN LOO PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE</p>	<p>JOB NO 07 0218101</p> <p>SHEET 1 OF 1</p>
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January 4, 2017

Patrick Sherrill, President and CEO
Accipiter Communications, Inc.
d/b/a Zona Communications
2238 W. Lone Cactus Drive, Suite 100
Phoenix, Arizona 85027
E-mail: psherrill@teamzona.com

Re: Request for Telecommunications Services and Consent to be Included in the Certificate of Convenience and Necessity of Zona Communications

Dear Patrick:

Eleanor Sloan, Trustee, under the Sloan Bypass Trust established under the Sloan Family Trust UTD November 12, 2004, as to an undivided 87.8% interest, and Eleanor Sloan, Trustee, under the Sloan Marital Trust established under the Sloan Family Trust UTD November 12, 2004, as to an undivided 12.2% interest, as tenants in common (collectively "Owner") is the owner of approximately 39 acres of land (the "Property") located in Section 27, Township 5 North, Range 1 West, G&SRB&M. A map and legal description of the Property are attached to this letter. Ashton Woods Arizona, L.L.C. is developing the Property as a master-planned residential subdivision known as Sonoran Place and requests that Accipiter Communications, Inc. d/b/a Zona Communications provide telecommunications services to the Property. Ashton Woods Arizona, L.L.C. and Owner understands that Zona Communications will need to apply for and obtain an extension of its Certificate of Convenience and Necessity ("CC&N") before it can serve the Property. Owner hereby consents to the inclusion of its Property in the CC&N of Zona.

Sincerely,



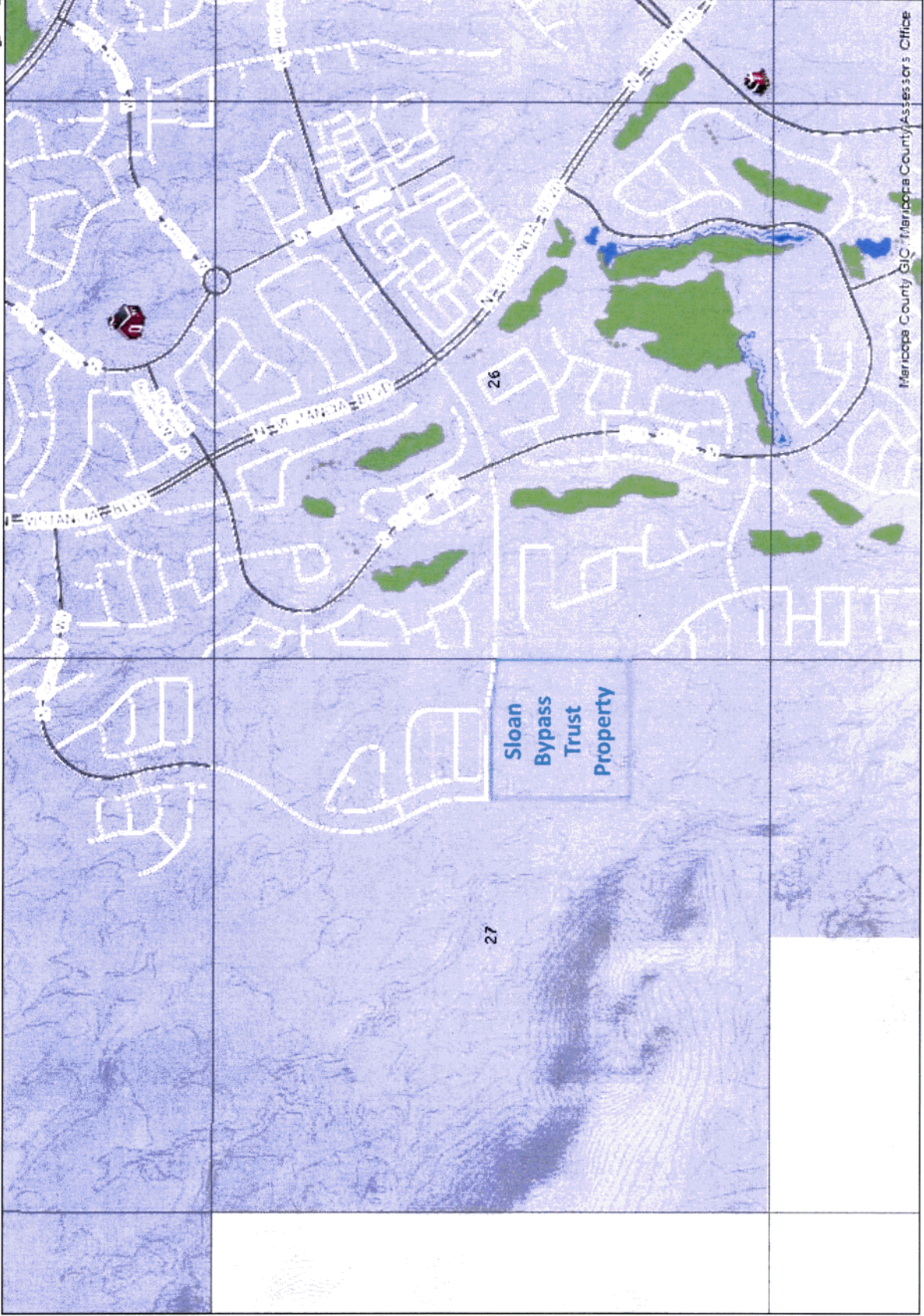
Eleanor Sloan as Trustee for Owner

enclosure

Legal Description for Sonoran Place

The northeast quarter of the southeast quarter of Section 27, Township 5 North, Range 1 West, Gila and Salt River Base and Meridian.

● Sections 26 & 27, T5N, R1W, Gila & Salt River Base & Meridian



ATTACHMENT 2

JAN 12 1995

722-95

DEAN HELLER SECRETARY OF STATE

Dean Heller

ARTICLES OF INCORPORATION



OF

ACCIPTER COMMUNICATIONS INCORPORATED

No. _____

The undersigned, acting as incorporator of a corporation under Section 78 of the General Corporation Law of Nevada, adopts the following Article of Incorporation for such corporation:

FIRST: The name of the corporation is ACCIPTER COMMUNICATIONS INCORPORATED .

SECOND: The name and address of the resident agent of the corporation is Corporation Trust Company of Nevada, 1 East 1st Street, Reno, Nevada 89501.

THIRD: The aggregate number of shares that the corporation shall have the authority to issue is ten million (10,000,000) shares of common stock, \$.001 par value.

FOURTH: The members of the governing board of the corporation are styled as directors. The number of directors constituting the initial Board of Directors of the corporation is three (3). The number of directors may be increased or decreased by action of the Board of Directors. The names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified are:

<u>Name:</u>	<u>Address:</u>
Lewis W. van Amerongen	600 Madison Avenue New York, New York 10022-1615
Robert Daly Richards	P.O. Box 280767; Lakewood, CO 80228-0767
Phillip K. Sotel	570 Garden Lane; Pasadena, California 91105

FIFTH: The name and address of the incorporator is:

<u>Name:</u>	<u>Address:</u>
David I. Farber	818 W. Seventh Street, 2nd Floor Los Angeles, CA 90017
Maria J. Sandoval	818 W. Seventh Street, 2nd Floor Los Angeles, CA 90017
Rosa Lopez	818 W. Seventh Street, 2nd Floor Los Angeles, CA 90017

SIXTH: A director or officer of the corporation shall not be personally liable to the corporation or its shareholders for damages for breach of fiduciary duty as a director or officer, except for liability for any of the following:

- (a) acts or omissions that involve intentional misconduct, fraud or knowing violation of law, or
- (b) the payment of distributions in violation of Section 78.300 of the General Corporation Law of Nevada.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right of protection of a director or officer of the corporation existing hereunder with respect to any act of omission occurring prior to or at the time of such repeal or modification.

SEVENTH: Any action required or permitted to be taken at a meeting of the shareholders of the corporation may be taken without a meeting if a consent in writing setting forth the action so taken is signed by shareholders holding at least eighty-five percent (85%) of the outstanding common stock. This Article may be amended only with consent of shareholders of the corporation holding at least eighty-five (85%) of the outstanding common stock.

DATED: January 11, 1995

David I. Farber

 David I. Farber, Incorporator

M. J. Sandoval

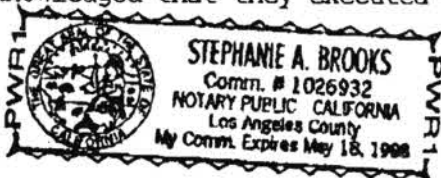
 Maria J. Sandoval, Incorporator

Rosa Lopez

 Rosa Lopez, Incorporator

STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

On this 11th day of January, 1995, before me, a Notary Public, personally appeared David I. Farber, Maria J. Sandoval and Rosa Lopez, who severally acknowledged that they executed the above instrument.




Stephanie A. Brooks

 Stephanie A. Brooks, Notary Public

CERTIFICATE OF ACCEPTANCE OF APPOINTMENT
BY RESIDENT AGENT

The Corporation Trust Company of Nevada hereby accepts the appointment as
Resident Agent of ACCIPITER COMMUNICATIONS INCORPORATED.

Resident Agent

by  Date 1-11-1995

Thomas C. Totaro,
Assistant Vice President

FILED
IN THE OFFICE OF THE
SECRETARY OF STATE OF THE
STATE OF NEVADA

JAN 12 1995

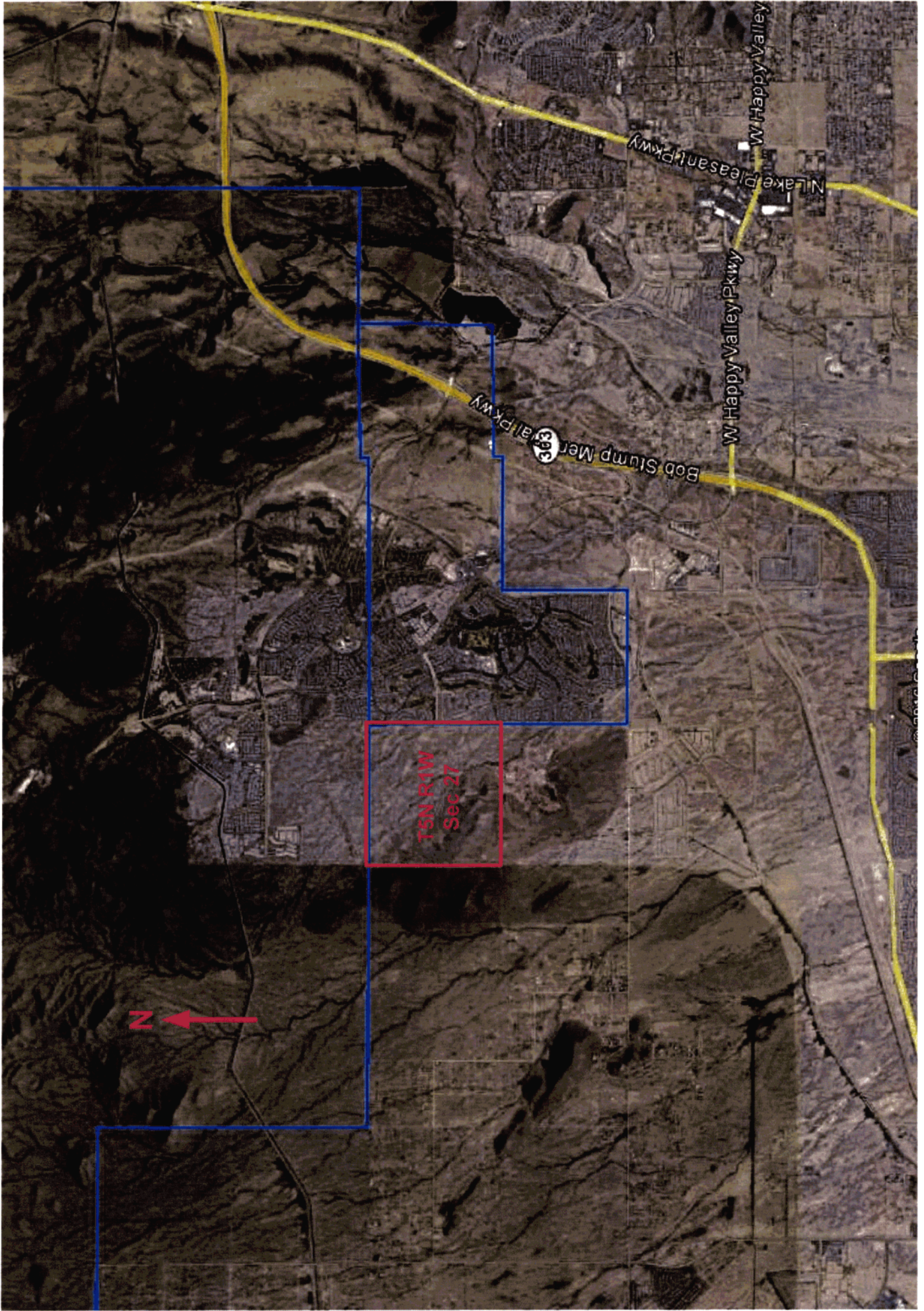
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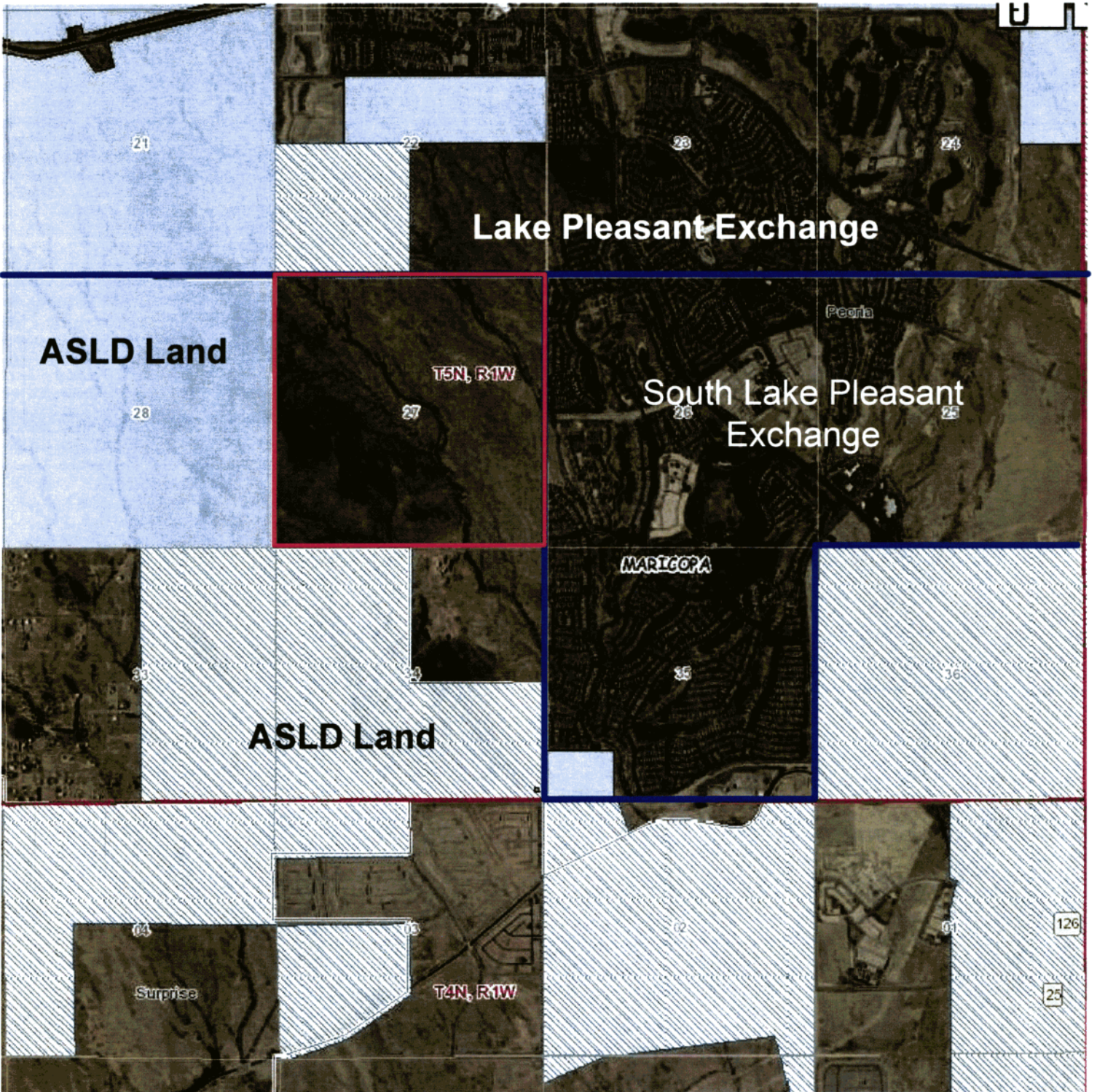
DEAN HELLER SECRETARY OF STATE

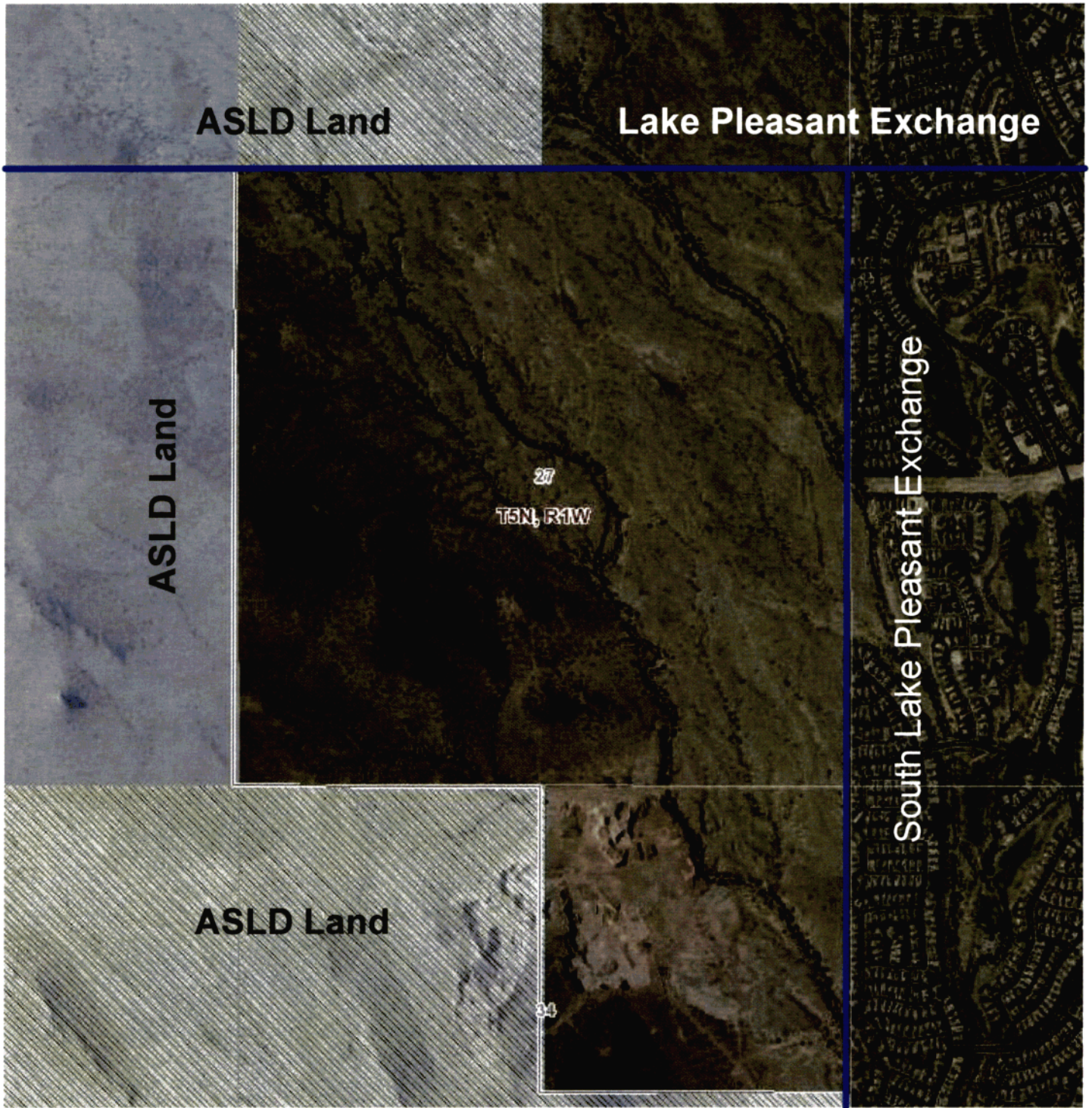
Dean Heller

No. _____

ATTACHMENT 3







ASLD Land

Lake Pleasant Exchange

ASLD Land

27
T5N, R1W

South Lake Pleasant Exchange

ASLD Land

27

T5N R1W Sec 27

ATTACHMENT 4

**TELECOMMUNICATIONS LICENSE AGREEMENT ISSUED TO
ACCIPITER COMMUNICATIONS INC. d/b/a ZONA COMMUNICATIONS
BY THE CITY OF PEORIA, ARIZONA**

THIS TELECOMMUNICATIONS LICENSE AGREEMENT ("Agreement" or "License") is issued by the CITY OF PEORIA, ARIZONA an Arizona municipal corporation (hereinafter called "City") to Accipiter Communications Inc., d/b/a Zona Communications (hereinafter called "Licensee"), a Nevada corporation.

WHEREAS, the City owns certain public streets and rights-of-ways and public utility easements within the boundaries of the City; and

WHEREAS, Licensee has applied to the City for permission to construct, install, operate, maintain and use the public highways, public streets, public rights-of-way, and public utility easements in the City in order to provide telecommunications services (i.e., to construct, operate and maintain its facilities in the right-of-way to provide telephone service.); and

WHEREAS, Licensee has represented to and provided documents to the City which establish that the Arizona Corporation Commission determined in an Opinion and Order, Decision No. 59346, dated October 11, 1995, that Accipiter is a fit and proper entity to receive a Certificate of Convenience and Necessity authorizing it to construct, operate and maintain facilities to furnish telephone service to the public in an area which encompasses part of the City of Peoria; and

WHEREAS, in addition, the Arizona Corporation Commission subsequently approved Accipiter's applications to extend its telecommunications services Certificate of Convenience and Necessity under Arizona Corporation Commission Opinion and Order Decision No 67574 (Docket No. T-02847A-02-0641) Dated February 15, 2005; Arizona Corporation Commission Opinion and Order Decision No 67675 (Docket No. T-02847A-03-0655) Dated March 9, 2005; and Arizona Corporation Commission Opinion and Order Decision 70641 (Docket No. T-02847A-08-0164 ET AL.) dated December 17 2008 within the geographic area covered by Licensee's Certificate of Convenience and Necessity, which geographic area is located partially within the municipal boundaries of the City; and

WHEREAS, by such authority as may be conferred by the Arizona Revised Statutes, as amended, the Peoria City Charter, City Code, state and federal law (as amended), the City is issuing this License; and

WHEREAS, Licensee has previously received permission from the City for the use of the City's rights-of-way for certain routes ("Use Areas"), identified on the map, attached and incorporated as Exhibit A, via the nonexclusive revocable Telecommunication Licenses pursuant to LCON 10603 dated December 6, 2003 and LCON 10709 dated December 4, 2009 (the "Original Agreement"); and

WHEREAS, Licensee desires the ability to be able to install maintain operate and repair, future telecommunication lines and equipment ("Facilities"), for the purpose of providing telephone service, as authorized by Arizona Corporation Commission Decision No. 59346, within the right-of-way and in subsequent Decisions authorizing different areas ("New Use Areas"), identified on the map, attached and incorporated as Exhibit B, subject to the requirements of this License Agreement; and

WHEREAS, the City desires to grant Licensee another License to continue to install maintain operate and repair, Facilities in New Use Areas for the purpose of providing telephone service as authorized by Arizona Corporation Commission; and

WHEREAS, the City is authorized to regulate its streets and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of such facilities within the City's boundaries pursuant to the Peoria Charter, Peoria City Municipal Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to A.R.S. §§ 9-581, 9-582, and 9-583), by the City's police power, its authority over the City's public rights-of-way, and its other governmental powers and authority; and

WHEREAS, pursuant to the Peoria Municipal Code, after City Council approval the City Council has authorized the City Manager or his designee to execute a license with Licensee to construct, install, operate, maintain and use Facilities in, along, under, over and across public highways, public streets, public rights-of-way, and public utility easements within the City to provide telecommunications services_(i.e., to construct, operate and maintain its facilities in the right-of-way to provide telephone service.); and

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the City hereby grants a Telecommunications License ("License") to Licensee and permission to use the public rights-of-way pursuant to the terms and conditions set forth herein.

<u>1. Exhibits</u>	<u>Description</u>
Exhibit A	Use Areas
Exhibit B	New Use Areas
Attachment A	Utility Permits - Guidelines for Working in the City of Peoria

2. Permission Granted.

2.1 Subject to the provisions contained herein, and to the City Code, City Charter, Arizona State Statutes and the Constitution of the State of Arizona, and federal law the City hereby grants to Licensee the nonexclusive revocable license, permission, right and privilege to construct, install, operate, maintain and use facilities in, under,

along, over and across public highways, public streets, public rights-of-way, and public utility easements to provide Telecommunications Services identified as telephone services, as authorized by Arizona Corporation Commission within the current and future corporate limits of the City. The terms, phrases, words and their derivatives shall have the meaning defined in Chapter 23 of the Peoria City Code as amended from time to time. The permission granted herein to Licensee shall hereinafter be referred to as "License." By accepting this License, Licensee agrees that this License and the Licensee are subject to all provisions of this License, the City Charter and City Code, including, but not limited to, Chapter 23, and the City Design Infrastructure Guide.

2.2 If it is necessary for the Licensee to comply with any rule or regulation of the Federal Communications Commission ("FCC") or the ACC to engage in business activities associated with use of the public highways, public streets, public rights-of-way, and public utility easements to provide Telecommunications Services recognized as telephone service, as authorized by Arizona Corporation Commission, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License. Provided, however, no such rule or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this License without a written modification to this License except to the extent required to be permitted by applicable law.

2.3 Licensee shall apply and be responsible for any permits to construct, install, maintain or perform any work in the public highways, public streets, public rights-of-way and public utility easements which require a construction permit and plan review approval from the City pursuant to applicable City Codes. Before constructing, operating, installing or using facilities in the public highways, public streets, public rights-of-way and public utility easements, Licensee shall notify the City in writing and shall be the party to apply and be responsible for any permits to construct, install, maintain or perform any work in the public highways, public streets, public rights-of-way and public utility easements which require a construction permit from the City pursuant to applicable City Codes or this License.

2.3.1 Revocable right-of-way permits require submittal of an application together with the required number of complete construction plans (i.e., drawing, details, maps, notes, etc.). Upon City receipt of the application and plans, the City will perform a technical plan review. Upon completion of the technical review, either a permit will be issued to the applicant or the application will be returned for addition modifications. If additional modifications or corrections are required, the applicant will be notified and must resubmit the application and plans after the required changes have been made.

2.3.2 Plan review fees are due and will be collected at the time of the submittal of the application and submittal of the required number of plans or the Licensee may be billed as determined by the City.

2.3.3 Revocable right-of-way permits fees are due and will be collected at the time of the issuance of the permit. Revocable right-of-way permits shall not be charged where there is a valid franchise and the franchise fees are in lieu of the payment of permit fees.

2.3.4 Licensee shall strictly adhere to and perform in accordance with the City's "Utility Permits - Guidelines for Working in the City of Peoria," identified on the map, attached and incorporated as Attachment A in the specific Use Area and New Use Areas, as amended from time to time by the City Engineer; failure to do so will result in a breach of this License and liquidated damages will accrue in the amount of One Thousand Dollars (\$1,000) per day beginning on the seventh (7th) day after written notice of the violation and continuing until the breach has been cured. Licensee agrees that this is a reasonable approximation of the damages to the City, and that actual damages would be difficult or impossible to determine.

2.4 Reserved Right and Competing Users Activity. Notwithstanding anything in this License to the contrary, the City specifically reserves to itself and excludes from this License an exclusive delegable right (the "Reserved Right") over any Use Areas for all manner of real and personal improvements and for streets, sidewalks, trails, landscaping, utilities, and every other land use of every description. Without limitation:

2.4.1 Competing Users. Licensee accepts the risk that the City and others ("Competing Users") may now or in the future use the Use Areas in a manner inconsistent with Licensee's use. The Competing Users include without limitation the City, the State of Arizona, and its political subdivisions, the public, and all manner of public utility companies and other existing or future users of the Use Areas.

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

2.4.2.1 All manner of streets, sidewalks, alleys, trails, ways, and traffic control devices of every description and all manner of other transportation facilities and their appurtenances.

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

2.4.2.3 All manner of canals, drains, bridges, underpasses, culverts and other encroachments of every description and all manner of other facilities and their appurtenances.

2.4.2.4 All other uses of the right-of-way that the City may permit from time to time.

2.5 Reserved Right. The Reserved Right includes the nonexclusive right to use and allow other Competing Users to conduct Competing Activities upon any area of the Use Areas.

2.6 The authority granted by this License does not in any way provide for any express or implied consent to use or otherwise operate within City owned and or operated conduit. Any such use or operation must be approved through an amendment to this License or as otherwise prescribed by the City at the time of the request.

2.7 This License shall not be construed in any way to grant Licensee the right or ability to construct over-head and above-ground facilities of any kind in conjunction with the work permitted by this License.

3. General Conditions.

3.1 The Licensee and City agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the City did not have the authority to issue a License to Licensee under A.R.S. § 9-581 to § 9-583, as amended or succeeded, then this License shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and the right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided therein.

3.2 There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any ordinance and the City Charter, and Licensee, by its acceptance of this License, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established, except those actions or requirements which are unlawful under state or federal law. Neither the granting of any License nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

3.3 In addition to the indemnity requirements set forth in the City Code at § 23-97, the Licensee shall indemnify, defend and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses of any nature, including reasonable attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of the act or omission by the Licensee and its agents, employees and contractors pursuant to this License or the construction, installation, operation, maintenance or use of the facilities authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this License.

3.4 In addition to the insurance requirements set forth in the City Code in § 23-97, Licensee shall comply with the Insurance Requirements attached to this License. Provided that the insurance also complies with all the requirements of this License, the Licensee may maintain as the insurance under this § 3.4 endorsements or amendments, in forms acceptable to the City Attorney, and to the extent that Licensee shall construct, operate, install or use its Facilities in the public highways, public streets, public rights-of-way, and public utility easements.

4. Public Highway Preservation.

4.1 Performance Bond. The Licensee shall file and maintain a faithful performance bond in favor of the City in the sum of Three-Hundred Eighty Thousand Dollars (\$380,000) to guarantee that the Licensee shall well and truly observe, fulfill and perform each and every term of this License. In case of any breach of any condition of this License, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate the City for any damages it may suffer by reason of such breach; provided, however, that Licensee shall have sixty (60) days following written notice by the City of such a breach to cure the breach. Said bond shall be acknowledged by Licensee, 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 City.

4.2 Security Fund. Prior to applying for any permit to construct, install, maintain or perform any work in the public highways, public streets, public rights-of-way and public utility easements which requires a construction permit from the City pursuant to applicable City Codes, the Licensee shall deposit into a suitable interest-bearing account, established by the City, and the Licensee shall maintain on deposit through the term of this License, the sum of not less than One-Hundred Thousand Dollars (\$100,000.00) in addition to which Licensee requests to place its telecommunication Facilities, as security for the faithful performance by it of all the provisions of this License, and compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under the License issued pursuant thereto, and the payment by the Licensee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Facilities. City shall have the full power of withdrawal of funds from the account except that all interest accrued shall be payable to the Licensee on demand. No withdrawals shall be made from the security fund account without the prior written approval of the City Manager and ten (10) days' prior written notice of intent to withdraw to Licensee.

4.2.1 Within thirty (30) days after notice to Licensee that any amount has been withdrawn by the City from the security fund pursuant to this § 4.2, the Licensee shall deposit a sum of money sufficient to restore such security fund to the original amount.

4.2.2 If the Licensee fails, within ten (10) business days of a notice of intent to withdraw from the security fund, to pay to the City any taxes or fees due and unpaid; or fails to repay to the City, within such ten (10) business days of such notice, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Licensee in connection with this License; or fails, within thirty (30) days of such notice of failure by the City to comply with any provision of the License which the City reasonably determines can be remedied by an expenditure of the security, the City may immediately withdraw the amount thereof, with interest from the security fund. Upon such withdrawal, the City shall notify the Licensee of the amount and date thereof.

4.2.3 The Licensee shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the License or

upon termination of the License at an earlier date, provided that there is then no outstanding default on the part of the Licensee. Any funds that the City erroneously or wrongfully withdraws shall be returned to Licensee, within thirty (30) business days of such a determination.

4.2.4 The rights reserved to the City with respect to the security fund are in addition to all other rights of the City whether reserved by this License or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

4.2.5 The Licensee shall provide the City, in a form acceptable to the City Attorney, an endorsement or amendment to such security providing that such security can be withdrawn by City pursuant to the provisions of this License and that, if withdrawn, such security shall be restored to the original amount as provided in this License.

4.3 Competitively Neutral Annual Fee. In the event that the City negotiates an annual fee (pursuant to A.R.S. § 9-583(C)(2), (as amended from time to time, which addresses payment of an annual fee based on the number of linear feet of trench that carry interstate traffic or any similar statute) with any other existing telecommunications licensees of the City during the term of this License, the City will notify the Licensee in writing and will then levy an annual fee similar to the annual fee charged to the other licensee. The annual fee will be no higher than is legally permissible under A.R.S. § 9-583(C)(2), as amended from time to time. Once an annual fee is levied on the Licensee, it may not be increased during the term of this License except as may be provided in the renewed license of the Existing Licensee.

4.4 Coordination. The City may issue reasonable policy guidelines to all telecommunications services licensees and permittees to establish procedures for determining how to control issuance of engineering permits to multiple licensees for the same one-mile segments of their facilities. The Licensee agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City Manager or his designee to coordinate the issuance of multiple engineering permits in the same one-mile segments.

5. Records and Locator Service of Facilities: Mapping.

5.1 The Licensee shall comply with A.R.S. § 40-360.21 *et seq.* by participating as required by law as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Licensee's facilities upon receipt of a locate call or as promptly as possible, but in no event later than two working days. A copy of the agreement or proof of membership shall be filed with the City.

5.2 The Licensee shall keep accurate installation records of the design, maps and location of all of its underground telecommunications Facilities in the public highways, public streets, public rights-of-way, and public utility easements in an electronic mapping format compatible with the current City electronic mapping format. Upon completion of any new construction or relocation of telecommunications Facilities in the public highways, public streets, public rights-of-way, and public utility easements for which a new construction permit is required, the Licensee shall provide to the City

Manager or his/her designee, within sixty (60) days of such completion, accurate updated electronic maps of the Licensee's telecommunications Facilities which includes, but may not be limited to "as-built" route maps and installation records for such construction in the City's electronic mapping format showing the location of underground and above ground facilities using symbols as determined by the City.

6. Installation and Operation of the Facilities.

6.1 All installations shall meet the applicable standard specifications and requirements of the City.

6.2 Pavement Cuts. The City has found that pavement cuts cause early deterioration of the streets and as such have imposed a surcharge fee to cover damages and early deterioration. Therefore, pursuant to § 23-54 of the Peoria City Code Licensee shall be responsible for the cost of all pavement cuts during the installation and maintenance of their Facilities and throughout the term of this License.

6.3 Trees. Any trimming of trees by the Licensee in the public highways, public streets, public rights-of-way, and public utility easements shall be subject to such regulation as the City Manager or other authorized official may establish to protect the public health, safety and convenience.

6.4 Empty Conduit. In an effort minimize the inconvenience to the citizens of the City and others who use the major arterial streets, if Licensee is working and portions of the project will take place on major arterial streets Licensee shall work with the City in the coordination and installation of empty City owned and operated conduit for the City's sole use. Any new conduit or other Facilities placed in the right-of-way will be constructed using industry standard boring, horizontal directional drilling, and trenching construction methods. Any conduit and/or Facilities to be constructed, installed, operated, removed and maintained under this License shall be located or relocated so as to interfere as little as possible with traffic or other authorized uses over, under or through said public streets and public ways.

6.5 Coordination. The City may issue reasonable policy guidelines to all telecommunications services licensees and permittees to establish procedures for determining how to control issuance of engineering permits to multiple licensees for the same one-mile segments of their facilities. The Licensee agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City Manager or his designee to coordinate the issuance of multiple engineering permits in the same one-mile segments.

6.6 The authority granted by this License to use the public highways, public streets, public rights-of-way, and public utility easements does not authorize Licensee's use of the facilities for operating a cable television system, a cable system or authorize the Licensee to operate as a cable operator as those terms are defined in the Communications Act of 1934 as amended, state law, or the City Code. The authority granted by this License does not authorize the use of the public highways, public streets, public rights-of-way, and public utility easements for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the City

may require to occupy the highways to provide service other than telecommunications service.

6.7 The Licensee shall comply with rules and regulations of the FCC and ACC that apply to the telecommunications services Licensee provides over the facilities in the public highways, public streets, public rights-of-way, and public utility easements that Licensee is authorized to use by this License. The Licensee shall, within a reasonable time after request by the City, provide the City copies of all correspondence from the FCC or ACC to the Licensee or from the Licensee to the FCC or ACC that is directly relevant to use of the public highways, public streets, public right-of-way and public utility easements to provide telephone service, as authorized by Arizona Corporation Commission as authorized by this License. In addition Licensee shall disclose to the City all persons with whom it contracts to use its Facilities in the public highways, public streets, public right-of-way and public utility easements within the City to provide telecommunications services.

6.8 Proprietary Information. In order for the City to determine the Licensee's compliance with the terms of this License, within ten (10) days of written notice by City of a request for disclosure, the Licensee shall provide relevant documentation as requested by City. Upon reasonable notice by City, Licensee shall make its facilities available for joint inspection as requested by the City. If the Licensee determines that in order to respond to City's request for documentation and inspection that it must reasonably provide proprietary information, the Licensee shall so designate such claim to proprietary treatment on documents provided to City.

6.8.1 Proprietary information disclosed by Licensee for the purposes hereunder shall mean any document or material clearly identified as confidential (hereinafter "Proprietary Information"). Such Proprietary Information shall include, but not be limited to, any customer lists, financial information, technical information or other information clearly identified as confidential pertaining to services provided to its customers.

6.8.2 Proprietary Information disclosed by Licensee hereunder to the City or its constituent departments shall be regarded as proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify Licensee of such request and allow the Licensee a reasonable opportunity to defend its information from disclosure. The foregoing shall not apply to any information that is already in the public domain; however, if public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain.

6.8.3 Notwithstanding any provision in this License, the Licensee acknowledges and understands that City is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 *et seq.*) and Licensee agrees that the City has no liability to Licensee for negligent disclosure thereunder.

7. Licensee Relocation of Facilities. Upon the City's request, Licensee shall temporarily or permanently relocate or otherwise modify existing and future Facilities ("Relocation Work") as follows:

7.1 Licensee shall perform the Relocation Work at no expense to the City when required by the City's Manager or designee.

7.2 The Relocation Work includes all of the work determined by the City to be necessary to accommodate competing activities, including without limitation to temporarily or permanently, removing, protecting, supporting, disconnecting or relocating any portion of the existing or future Facilities.

7.3 The City shall perform any part of the Relocation Work that has not been performed within Sixty (60) days after notice from the City. Licensee shall reimburse the City for its actual costs associated with any Relocation Work.

7.4 City has no obligation to move Licensee's, City's or other's facilities.

7.5 The City not Licensee shall be entitled to use any of Licensee's Facilities that are not timely relocated.

7.6 All Relocation Work shall be subject to the provisions of this License and the Peoria City Code and other City requirements including, but not limited to the City's Infrastructure Guidelines.

8. Licensee Abandonment of the Facilities. If the Licensee abandons use of its cable, ducts or other facilities (used to provide telecommunications services for telephone service, as authorized by the Arizona Corporation Commission and pursuant to the License) or upon cancellation, revocation or termination of the privilege herein granted, Licensee shall notify the City and may – subject to the City's approval – permanently abandon the improvements in place.

8.1 In the event of cancellation, revocation, termination, or permanent abandonment, the City shall require Licensee to comply with all necessary requirements identified in the City of Peoria Infrastructure Design Guidelines as well as any other applicable regulations to remove its Facilities.

9. Term of License.

9.1 The right, privilege and license granted herein shall continue and exist for a period of five (5) years from the effective date hereof unless sooner revoked as provided in this Agreement. No provision of this License may be construed to grant any automatic extension, renewal, or replacement thereof.

9.2 At any time prior to the expiration of this License, the Licensee may apply to the City for a renewal or extension of the License in accordance with the then existing state and City laws.

10. Transferability of License.

10.1 No Assignment. The rights, privileges and license granted hereunder shall not be sublet, assigned or otherwise transferred nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Licensee, either by act of the Licensee or operation of law, without the express written consent of the City by an ordinance or resolution passed by the City Council, which consent shall not be

unreasonably withheld. Before any proposed assignment or other transfer becomes final, the Licensee shall request the consent of the City to such proposed assignment. Any such assignment or transfer shall be in conformance with the applicable sections of the City Code. Any transfer or assignment that is to occur shall adhere to the provisions outlined in the City Code. The new Licensee (if consented to by the City) shall be equally subject to all the obligations and privileges of the original License – including any amendments – which will remain in full effect as if the new Licensee was the original Licensee.

10.2 Contact. The Licensee shall notify the City within thirty (30) days of any change in mailing address or emergency phone numbers.

Licensee Address:

Accipiter Communications Inc
2238 W Lone Cactus Dr Ste 100
Phoenix, AZ 85027
Licensee Emergency Phone Number:
480-206-5374

10.3 Instruments. After the approved transfer, the Licensee shall provide City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such transfer, certified and sworn to as correct by the Licensee. A request for consent to transfer shall include an assignment agreement executed by Licensee and transferee, and for execution by the City after its consent, that:

10.3.1 The transferee has read, accepts and agrees to be bound by the License;

10.3.2 The transferee assumes all obligations, liabilities and responsibility under the License for the acts and omissions of Licensee, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which Licensee could not have exercised;

10.3.3 The assignment of the License (including all amendments) shall be binding on the transferee as upon the transferor of the License as if the transferee had originally executed the License for the full term of the License; and

10.3.4 The transfer will not substantially diminish the financial resources available to the Licensee.

10.4 Lenders. Nothing in this Section shall be deemed to prohibit a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of the Licensee through a default of the Licensee in loan obligations, the lender may assume the rights and obligations of the Licensee. The lender may not transfer or change control of the License without submitting the change to the City for consent under this Section. If the lender does continue operation on any basis at any time, it shall be subject to all provisions of the License. No later than three years after assumption of control by the lender, the lender shall apply to the City for the right to continue

assumption of control or to transfer the License. Application by the lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and approval shall not be unreasonably denied or delayed. A "lender" as discussed herein does not include a company, person or corporation or other entity that operates cable television systems or telecommunications systems as a principal or important business. This section is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the License without City Council review and approval.

10.5 Permitted Transfer.

10.5.1 Notwithstanding the foregoing, prior consent shall not be required for a transfer to a company that meets the following conditions:

10.5.2 After the transfer, the company will be owned or controlled or under common control with the same direct parent, and are intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent.

10.5.3 Within thirty (30) days after completing a transfer described in this § 10.5, Licensee and the proposed transferee shall submit to the City a notice of transfer, including documents meeting the conditions, and a description of the nature of the transfer, including complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License.

10.5.4 After the transfer, the Licensee shall provide City a copy of the deed, agreement, mortgage, or lease or of another written instrument evidencing such transfer, certified and sworn to as correct by the Licensee.

10.5.5 After the transfer, the new licensee must comply with the provisions of this §10 with respect to further transfers as if the new licensee were the original Licensee.

11. Nonexclusive License. This grant is not exclusive, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted the City under the Constitution and laws of the State of Arizona.

12. Revocation of License.

12.1 The City may revoke the License granted hereunder prior to its date of expiration if the Licensee fails to comply with the material terms and conditions of the License or applicable law.

12.2 Before revoking the License, the City Manager or a designee shall give written notice to Licensee of the defect in performance and give Licensee sixty (60) days within which to cure the defect in performance.

12.3 The City need not provide a sixty (60) day cure period prior to revocation if the City finds that the defect in performance is due to an intentional misconduct, is a violation of criminal law, is an immediate danger to public health and welfare, or is a part

of a pattern of violations where the Licensee has already had notice and opportunity to cure.

12.4 If the Licensee requests a hearing before revocation, the City shall provide a procedure for such a hearing prior to final action on the notice of defect in performance.

13. Acceptance of License Terms and Conditions.

13.1 This License shall not become effective until written acceptance thereof shall have been filed by Licensee with the City Clerk. By accepting this License, the Licensee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the License and by the Charter, Code, laws, rules and requirements of the City.

13.2 The Licensee acknowledges and accepts the right of the City to issue a License under currently applicable law and Licensee agrees it shall not now or at any time hereafter challenge this right to issue the License in any way or in any forum.

13.3 The Licensee has reviewed the City's ability to grant a License and accepts such a License as the City may now be legally able to grant.

13.4 In the event of conflict between the terms and conditions of the License and the terms and conditions on which the City can grant a license or permission to use the public highways, public streets, public rights-of-way and public utility easements as set forth in applicable law, the applicable law shall, without exception, control.

13.5 Nothing in this License shall be deemed to waive the requirement of the various codes, ordinances and regulations of the City regarding permits, fees to be paid or manner of construction.

13.6 The Licensee agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the City because of the enforcement of the License or because of defects in ordinance or License issuance, or because of any required dedication or failure to require the dedication of any right or interest in real or personal property in conjunction with any site plan approval, zoning, rezoning, or any other application of City authority to an interest in land.

14. Exhibits. All Exhibits referred to in this License and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendments to this License are by such reference incorporated in this License and shall be deemed a part of this License.

15. Survival of Liability. All obligation of Licensee hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this License.

16. No Warranty. Licensee acknowledges and agrees that the City does not warrant the condition or safety of its public highways, public streets, public right-of-way and public utility easements or the premises surrounding the same, and Licensee hereby assumes all risk of any damages, injury or loss of any nature whatsoever caused by or in connection with the use of any City public highways, public streets, public right-of-way and public utility easements.

[Signatures Appear on Following Pages]

This License executed this 11th day of October, 2016.

CITY OF PEORIA, ARIZONA, a municipal corporation

By: *Susan Waludung*
Carl Swenson, City Manager

ATTEST:

Rosende Herminia
City Clerk



APPROVED AS TO FORM:

Stephen J. Bury
City Attorney

ACCEPTED by:
Accipiter Communications, Inc.

By: _____
[Signature]

[Printed Name]

Its: _____

State of Arizona)
)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

Notary Public

ACCEPTED: _____

Accipiter Communications Inc

By: J. Vellucci
Its: Vice Pres / CFO

State of Arizona)
County of Maricopa)

On this 8th day of July, 2016, before me personally appeared

Jenifer Vellucci, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

Melissa Rosemecker
Notary Public



Exhibit A

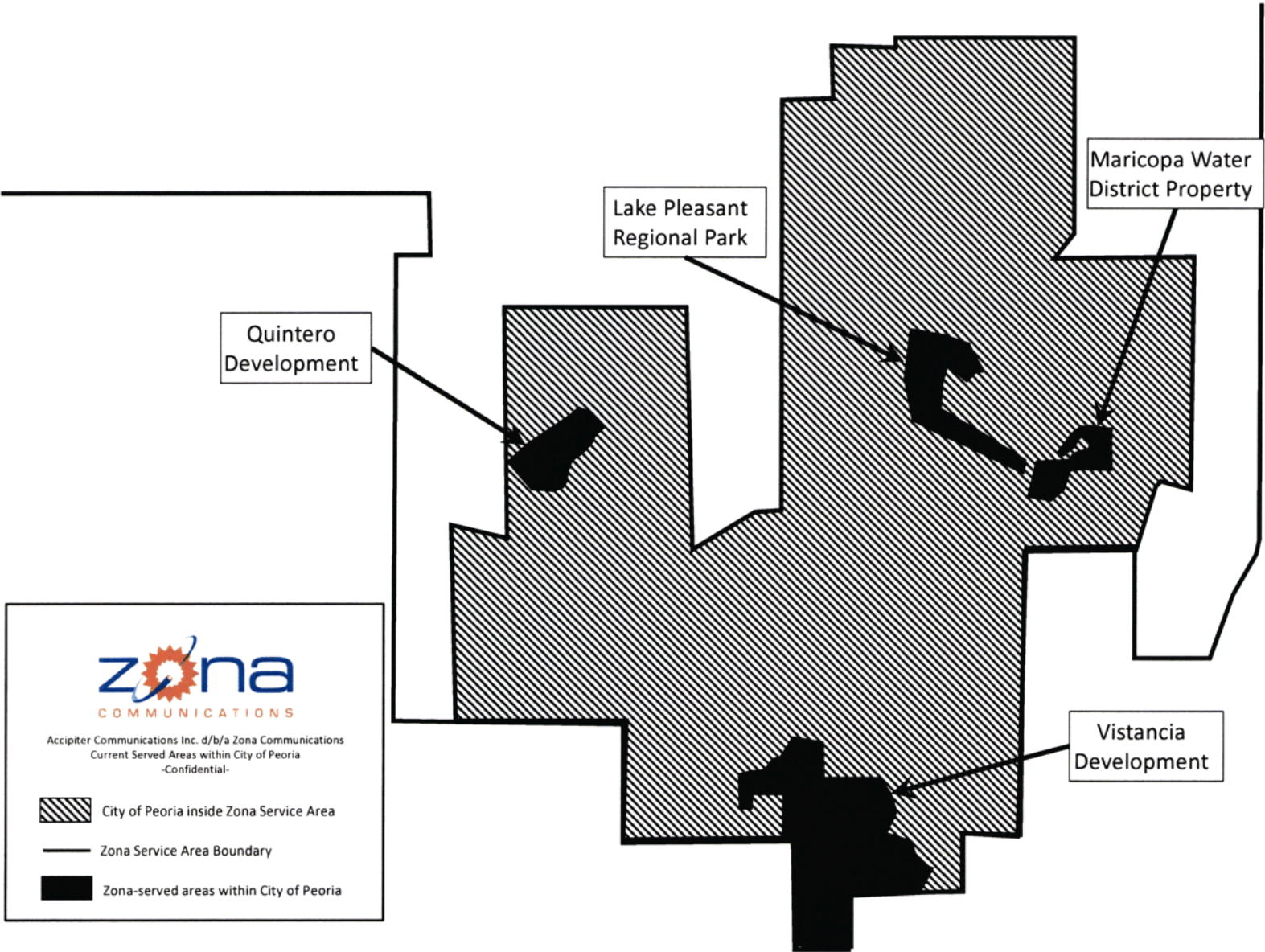


Exhibit B

