

FIBER OPTICS TELECOMMUNICATIONS RIGHT-OF-WAY LICENSE AGREEMENT

AGREEMENT (the "Agreement") is made and effective this 18th calendar day of April, 2022, by and between the City of Goodyear, an Arizona municipal corporation ("Licensor"), and Wyverd Connect, a Delaware limited liability company ("Licensee").

RECITALS

- A. Licensor owns public street and alley rights-of-way and public utility easements within the boundaries of the City of Goodyear (the "Boundaries") that are designated for use by public utility companies for installation, operation and repair of water, electrical and other public utilities pursuant to franchises, licenses or other agreements between utility companies and Licensor collectively, the RIGHT-OF-WAY ("ROW").
- B. For purposes of this License, "Fiber Optics Communication System" means an interstate and intrastate network of fiber optic cables and all related property including conduit, carrier pipe, cable fibers, repeaters, power sources and other attachments and appurtenances necessary for transmitting high speed voice, video and data in connection with telecommunications systems.
- C. For the purposes of this License "Fiber Optics Communication System" does not include one-way transmissions directly to customers, users or subscribers of video programming or other programming services or subscriber interaction, if any, which is required for the selection of or response to video programming or other programming services. For purposes of the foregoing, the term "video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station. The term "other programming services" means information that a cable television system operator makes available to all subscribers generally.
- D. Lessee desires to install and operate telecommunications fiber optic lines and related support equipment, including but not limited to fiber optic cables, pipe, conduits, vaults, and other appurtenances (the "Private Plant") under and in a portion of the ROW subject to the requirements of this Agreement and Chapter 22, Goodyear City Ordinance.
- E. Licensor desires to grant to Licensee a nonexclusive license to construct, install, maintain, operate, upgrade and repair the Private Plant (the "Permitted Uses") subject to the requirements of this Agreement.
- F. Licensor and Licensee desire to provide a method whereby additional portions of the ROW (the "New Use Areas") be added to this

Agreement. Licensee may expand its Private Plant within the City's ROW by obtaining a permit from the City and upon the City's approval of plans. City may grant, with conditions, or deny such approval in its sole discretion. Any expansion of the Private Plant approved by the City shall be subject to all terms and conditions of this License and the conditions, if any, imposed by the City.

- G. Various laws (the "Telecommunications Laws") authorize Licensor to regulate its streets, alleys and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of telecommunications systems. The Telecommunications Laws include, without limitation, the following:
 - 1) The Goodyear City Charter.
 - 2) A.R.S. §§9-581 through 9-583 and other state and federal statutes.
 - 3) The Constitution of the State of Arizona.
 - 4) Other applicable federal, state and local laws, codes, rules and regulations.
 - 5) Licensor's police powers, its authority over public rights-of-way, and its other governmental powers and authority.
- H. Pursuant to the Telecommunications Laws, Licensee has obtained from the Arizona Corporation Commission a Certificate of Convenience and Necessity (CC&N) (the "Certificate").
- I. There may be portions of the ROW (the "Third Party Areas") upon which the Private Plant may not be built without permission (the "Third Party Permission") from one or more third parties (the "Third Parties"). The Third Party Areas are areas such as canal crossings or other areas that for any reason have limited ROW dedications or that have regulatory use restrictions imposed by a Third Party.
- J. The Licensor retains the right to adopt, from time-to-time, in addition to the provisions contained in this Agreement, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the Licensor to protect and promote the property, health, safety and welfare of the Licensor's inhabitants.

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

I. USE AREAS

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

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

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

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

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

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

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

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

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

1.3.3 Licensor's city manager or designee shall have authority without further act by Licensor's city council to consent for Licensor to the addition of New Use Areas and otherwise act for Licensor under this paragraph.

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

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

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

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

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

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

1.8.2 Competing Activities. Licensee accepts the risk that there may now or in the future exist upon the Use Areas all manner of work and improvements upon the Use Areas (the "Competing Activities"). The Competing Activities include without limitation any and all laying construction, erection, installation, use, operation, repair, replacement,

removal, relocation, raising, lowering, widening, realigning or other dealing with any or all of the following, whether above, upon or below the surface of the Use Areas and whether occasioned by existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land:

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

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

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

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

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

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

1.8.5 Use Priorities. This Agreement does not grant to Licensee or establish for Licensee any exclusive rights or priority in favor of Licensee to use the Use Areas. Licensee's use of the Use Areas shall be subordinate to all Competing Activities. Licensee shall not obstruct, impede, disrupt or interfere with or prevent any Competing User from using the Use Areas.

1.8.6 Regulation. Licensor shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and, subject to Licensee's rights under

this Agreement, to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, Licensor may take any or all of the following into account in regulating use of the Use Areas:

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

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

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

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

1.8.7.1 Licensee shall perform the Relocation Work at its own expense when required by Licensor's city manager or designee.

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

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

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

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

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

1.8.7.7 Licensee's relocation obligations hereunder are not intended to create any legal rights in any third party. Without limitation, no third party shall be a third party beneficiary of such obligations, and, therefore, any and all obligations third

parties may have to bear the cost of relocating Licensee's facilities in connection with Competing Activities shall not be diminished by Licensee's relocation obligations hereunder.

1.8.8 Disruption by Competing Users. Neither Licensor nor any agent, contractor or employee of Licensor shall be liable to Licensee, its customers or third parties for any service disruption or for any other harm caused them or the Private Plant due to Competing Users or Competing Activities.

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

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

1.8.11 Public Safety. If the Private Plant or any other Licensee equipment, improvements or activities within the Use Areas present any immediate hazard or impediment to the public, to Licensor, to other improvements or activities within or without the Use Areas, or to Licensor's ability to safely and conveniently operate the ROW or perform Licensor's utility, public safety and other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with Licensor's requests to secure the Use Areas, and

otherwise cooperate with Licensors at no expense to Licensors to remove any such hazard or impediment. Licensee's work crews shall report the Use Areas within two (2) hours of any request by Licensors under this paragraph.

II. TERM OF AGREEMENT

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

2.1 Original Term Expiration. The original term of this Agreement shall terminate 11:59 p.m. on the date that is the fifth (5th) annual anniversary of this Agreement, unless sooner terminated as set forth in this Agreement.

2.1.1 The Licensors and Licensee agree that this Agreement shall automatically terminate at any time after the initial term in the event Licensee is no longer a party to any service Agreements or service extensions.

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

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

2.2.2 If applicable, such extension(s) shall be subject to the terms and conditions contained in A.R.S. 9-583(G).

2.2.3 Both Licensors and Licensee shall indicate whether or not they consent to an extension by giving notice of consent to the other not more than one hundred eighty (180) calendar days nor less than ninety (90) calendar days prior to the end of the original term (or, in the case of the second or subsequent extension, the prior extension).

2.2.4 Any future renewals or extensions of this license may include an increase in the annual fee and any other applicable fees set forth in this license.

2.2.5 Licensee shall pay to Licensors an extension fee in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) not less than (30) calendar days prior to the end of the original term (or, in the case of the second or subsequent extension, the prior extension).

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

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

III. LICENSEE'S PAYMENTS

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

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

3.1.1 An amount (the "Annual Fee Payment") based on Licensee's use of the Private Plant to provide interstate telecommunications services as such services are defined by A.R.S. § 9-583 (C)(2) and any leasing of fiber to third parties.

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

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

3.1.4 All other amounts required by this Agreement.

3.2 Annual Fee Payment Amount. The amount of the Annual Fee Payment shall be 89 cents (\$.89) per linear foot of copper, fiber optic or other cable conductor or conduit. The Annual Fee described above may be offset by in-kind exchanges of fiber, conduit, and/or joint trenching for the City's use.

3.3 The Parties finalized an in-kind exchange agreement attached as Exhibits B (supplemental in-kind agreement) and C (in-kind map of fiber and conduit exchanges).

3.4 Future in-kind exchanges between the Parties shall be in writing and set forth in an amendment to this agreement.

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

3.6 Adjustments. All fixed dollar amounts stated in this Agreement shall be automatically adjusted upward annually on July 1st. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index") for the month of January. The amount of each adjusted amount (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number on the last adjustment date (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and multiplied by the current amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} \times \$ M$$

provided, that in no event shall any amount be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, City shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate, subject to adjustment when the actual figures become known. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, then an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by City in City's reasonable discretion. Any delayed adjustment shall be effective retroactively. Insurance coverages shall be rounded to the nearest million dollars.

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

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

3.8.1 Licensee shall pay Annual Fee Payment by the anniversary date of each year of this agreement.

3.8.2 Licensee shall pay Permit Fee Payment at the times and in the

amounts specified by Licensor's normal processes for Ordinary Permit Charges.

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

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

3.10 Letter of Credit. Within ten (10) calendar days after the date of this Agreement, Licensee shall provide to Licensor a letter of credit as follows:

3.10.1 The amount of the letter of credit shall be Ten Thousand Dollars (\$10,000).

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

3.10.3 The letter of credit shall meet the requirements listed on Exhibit "A" attached hereto.

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

3.10.4.1 Licensee shall cause the original letter of credit to be delivered to Licensor's financial services director.

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

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

3.10.5 Licensor may draw on the letter of credit upon any Event of Default, and in the following circumstances whether or not they are an Event of Default:

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

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

3.10.5.3 The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.

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

3.11 Late Fees. Fee Payment is deemed paid only when Licensor actually receives good cash payment. Should any Fee Payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount of ten percent (10%) of the amount due, or One Hundred Dollars (\$100), whichever is greater. Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one percent (1%) per month from the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent fair and reasonable estimates by Licensor and Licensee of Licensor's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of Fee Payment. Licensor shall have the right to allocate payments received from Licensee among Licensee's obligations.

3.12 Fee Payment Amounts Cumulative. All amounts payable by Licensee hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the City of Goodyear or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

IV. USE RESTRICTIONS

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

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

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

4.1.2 Such additional related uses for which Licensor may give or retract written consent from time to time. Such additional uses may only be conducted following Licensor's giving to Licensee written notice of such consent. Licensor may terminate or impose conditions and

limitations on such consent from time-to-time in Licensor's sole and absolute discretion.

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

4.2.1 Licensee may use a User Contract to either "sell" or "lease" fibers or conduit in the Private Plant or otherwise grant permission to the third party to use fibers or conduit in the Private Plant. But, all User Contracts and all rights and interests created or affected in any way thereby, however denominated, shall be subject to and limited by all provisions of this Agreement. In no event shall Licensor be bound in any way by any provision of any User Contract.

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

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

4.2.2.1 The name of the third party.

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

4.2.2.3 The route of the proposed service.

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

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

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

4.3.1 The following are Regulated Activities:

4.3.1.1 Use of the Private Plant for cable television as

defined by applicable Federal, state or local law or regulation.

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

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

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

4.3.4 If Licensee ever obtains or seeks federal, state or local approval to provide Regulated Activities over the Private Plant, this Agreement shall remain in effect according to its terms and Licensee shall continue to pay the Use Fees required by this Agreement, regardless of any legal or regulatory provisions, permits or other processes or rules that might now or hereafter provide otherwise.

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

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

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

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

4.5 Lighting. Lighting is prohibited except as this Agreement may specifically

allow for construction activities.

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

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

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

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

4.7.1 State of Arizona

4.7.2 Maricopa County

4.7.3 Bureau of Reclamation

4.7.4 Central Arizona Water Conservation District

4.7.5 Salt River Project

4.8 Licensee's Agent. Licensee shall at all times retain on call available to Licensor by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Private Plant and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and the calendar day-to-calendar day operation of the ROW and all other matters affecting this Agreement. Licensee shall also provide notice to Licensor of the name, street address, electronic mail address, and regular and after hours telephone numbers of a person to handle Licensee's affairs and emergencies at the ROW. Any change shall be given in writing in the manner stated for notices under this Agreement.

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

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

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

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

4.10.1.2 Electric backup batteries and other materials that may contain Toxic Substances that are commonly used in the provision of Licensee's Telecommunications Services.

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

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

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

4.10.5 Licensee shall immediately notify Licensor of any Toxic Substance at any time discovered or existing upon the ROW. Licensee

is not responsible for Toxic Substances that may exist at the ROW if Licensee, Licensee's contractors, and other persons using the ROW under this Agreement did not do any of the following:

4.10.5.1 Participate in the Toxic Substance coming to the ROW.

4.10.5.2 Fail to immediately report the Toxic Substance to Licensor.

4.10.5.3 Participate in spreading or otherwise disturbing the Toxic Substance.

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

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

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

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

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

V. IMPROVEMENTS BY LICENSOR

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

VI. LICENSEE'S IMPROVEMENTS GENERALLY

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

6.1 Construction Plans. Annually, and upon reasonable request with at least thirty (30) calendar days prior written notice by the city manager or designee from time to time, Licensee shall deliver to Licensor route maps showing plans for existing and proposed construction of the Private Plant along arterials and other principal streets and public ways within the City. The files and drawings provided by Licensee shall be disclosed as a public record only to the extent required by A.R.S. § 39-126.01. If applicable, Licensee shall mark any submitted files and drawings subject to § 39-126.01 non-disclosure as confidential.

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

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

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

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

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

6.7 Cost of Licensee Improvements. All Licensee's Improvements shall be designed and constructed at no expense to City. In no event, including without limitation termination of this Agreement for any reason, shall Licensors be obligated to compensate Licensee in any manner for any of Licensee's Improvements or other work provided by Licensee during or related to this Agreement. Licensee shall pay, protect, indemnify, defend and hold harmless Licensors and Licensors's employees, officer's, contractors and agents against all claims related to labor, materials, professional services and other work for Licensee's Improvements. Licensee shall bear the cost of all work required from time to time to cause the ROW and other nearby property owned by Licensors to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Licensee, by Licensee's use of the ROW, or by any exercise of the rights granted to Licensee under this Agreement.

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

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

6.10 Restoration. Following installation, repair or replacement work performed in the Use Areas, Licensee shall restore disturbed areas of the Use Areas to a condition equal to or better than the condition of the Use Areas immediately prior to Licensee's activities. The preceding sentence does not require Licensee to repair or maintain Licensor's or third party facilities at the Use Area unless such work is attributable in whole or in part to Licensee's use of the Use Area.

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

6.11 Coordination with Dry Utility Permit Process. Licensee shall perform no construction work in the Use Areas without obtaining through normal processes from Licensor a permit giving permission to work in the ROW. Licensee shall not alter or perform any work to Licensor's improvements without first obtaining through normal processes from Licensor a permit giving permission to alter Licensor's improvements. Licensee shall not obstruct traffic without obtaining through normal processes from Licensor a permit granting permission to obstruct traffic.

6.12 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Licensee shall cause the Use Areas to be visually inspected for any signs of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Licensee shall cause the contractor or other person performing such work to give to Licensor notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend and hold Licensor harmless against any disturbance in such materials in the course of the contractor's or other person's work. Licensee shall cause any storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Licensee upon the ROW to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Licensee shall promptly deliver to Licensor copies of all reports or other information regarding Toxic Substances.

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

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

6.13.1.1 Complete blockage of a sidewalk or trail.

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

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

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

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

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

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

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

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

6.14.1 Critical Streets are all of the Litchfield Road, Estrella Parkway, Van Buren St., and Mc Dowell Road ROW and all ROW within one hundred (100) feet of the ROW of any of these roads. Critical Streets are only the streets named in this paragraph and do not include other streets encircled by or near the Critical Streets.

6.14.2 Large Streets are all streets shown on Goodyear's General Plan

as Major Arterials, Minor Arterials or Collectors.

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

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

6.15.1 Licensee shall obtain all permits.

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

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

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

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

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

6.17.1 Heavy Work is prohibited on Critical Streets during the period from February 1 to March 31.

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

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

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

VII. LICENSEE'S INITIAL PROJECT CONSTRUCTION

7. Licensee's Initial Project Construction. Licensee is not required to construct any

portion of the Private Plant by any particular deadline.

VIII. MAINTENANCE AND OPERATIONS

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

8.1 Right of Inspection. Licensor shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement, the Engineering Design Standards and Policies Manual, or other Laws. All Licensor plans reviews, inspections, standards and other rights and actions with relation to Licensee's Improvements are for Licensor's sole and exclusive benefit and neither Licensee nor any other person shall rely thereon or have any rights related thereto.

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

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

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

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

IX. BREACH BY LICENSEE

9. Breach by Licensee. Licensee shall comply with the terms and provisions of this Agreement and shall cause all persons using the Use Areas under the

authority granted Licensee by this Agreement to do the same. Licensee's failure to do so shall be a material breach by Licensee of this Agreement. A hearing shall be held before the City Manager before revoking or refusing to renew a license if requested by the Licensee within fourteen (14) calendar days of notification by Licensors.

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

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

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

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

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

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

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

9.1.5.2 The date sixty (60) calendar days after Licensors gives Licensee notice of such noncompliance.

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

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

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

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

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

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

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

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

9.2.1 Terminate this Agreement. Termination of this Agreement due to Licensee's breach or for any other reason does not terminate Licensee's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Licensee's liability related to any breach of this Agreement.

9.2.2 Cause a receiver to be appointed for the continuing performance of Licensee's obligations at the Use Areas.

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

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

9.2.5 Notwithstanding anything in this Agreement to the contrary,

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

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

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

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

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

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

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

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

9.3.3 Violation Fee Payment is only intended to remedy Inconvenience Costs that Licensors suffers because of Licensee's breach of the Violation Fee Provisions. Licensee's payment of Violation Fee Payment does not

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

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

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

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

9.3.6.1 The amount of Six Hundred Dollars (\$600.00) per calendar day for Licensee's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) calendar days after Licensor's notice to correct such defects. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the ROW or correct the violation.

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

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

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

9.3.7 Violation Fee Payments shall be assessed as follows:

9.3.7.1 If Licensor determines that Licensee is liable for Violation Fee Payment, then Licensor shall issue to

Licensee a notice of Licensors assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.

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

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

9.3.7.4 If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment.

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

9.5 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensors to demand any performance required of Licensee under this Agreement, and no acceptance by Licensors of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Licensors ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensors of Fee Payment payments or other performances

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

9.6 Reimbursement of Licensor's Expenses. Licensee shall pay to Licensor within thirty (30) calendar days after Licensor's demand any and all amounts expended or incurred by Licensor in performing Licensee's obligations after an Event of Default together with interest thereon at the rate of one and one-half percent (1.5%) per month from the date expended or incurred by Licensor.

9.7 Inspection. Licensor shall have access to all portions of the Use Areas at all times and without notice for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Use Areas or exercising Licensor's other rights hereunder. Licensee shall promptly undertake appropriate action to rectify any deficiency (identified by Licensor during such inspections or otherwise) in Licensee's compliance with this Agreement. This paragraph does not limit Licensor's other rights of access to the Use Areas elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Licensor inspectors or other employees and officers acting within their legal authority.

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

completion provided such cure must be completed within sixty (60) calendar days after the notice.

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

X. TERMINATION

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

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

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

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

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

10.5 Removal of Improvements. NOTWITHSTANDING anything in this paragraph or the remainder of this Agreement to the contrary, unless Licensor directs otherwise, Licensee shall leave the cable, conduits, other appurtenances, and the remainder of the entire Private Plant in place in good

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

XI. INDEMNITY AND INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.3.7.1 Licensee shall be solely responsible for all such

amounts.

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

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

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

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

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

The Licensee shall provide Licensors with at least thirty (30) calendar day's prior notice of any cancellation.

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

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

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

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

environmental injury, personal injury or other liability relating to Licensee's use of real property under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to claims arising from the sole gross negligence or intentionally wrongful acts of Licensors.

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

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

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

XII. CONDEMNATION

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

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

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

XIII. DAMAGE TO USE AREAS

13. Damage to Use Areas. In the event of damage to or destruction of the Private Plant by fire, explosion, the elements, the public enemy, or other casualty, Licensee shall commence restoring the casualty damage within thirty (30) calendar days. Licensee shall complete the restoration work within one hundred and twenty (120)

calendar days after commencing the restoration work. Licensee's restoration work shall be subject to the plans approval process and all other requirements for Licensee's Improvements. Licensee shall perform all restoration work at Licensee's sole cost and expense. Licensee shall provide to Licensors no later than the tenth calendar day of each month a written report of the progress of the restoration work.

XIV. LICENSEE'S RECORDS

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

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

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

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

14.2 Records Inspection. Licensee shall:

14.2.1 Permit and assist Licensors and its representatives to inspect, audit, and copy Licensee's records of Covered Information.

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

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

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

14.4 Record Media Included. Licensors' and Licensee's rights and obligations regarding the Covered Information apply regardless of the type of media,

materials, or data repositories that may contain the Covered Information. Licensor's rights to the Covered Information apply regardless of whether the Covered Information is stored on recordings, notes, ledgers, correspondence, reports, drawings, memoranda, or other repository of Covered Information.

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

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

14.7 Files and Drawings. The files and drawings provided by Licensee shall be considered confidential and shall be disclosed as a public record only to the extent required by A.R.S. § 39-126.01. If applicable, Licensee shall mark any submitted files and drawings subject to § 39-126.01 non-disclosure as confidential.

XV. COMPLIANCE WITH LAW

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

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

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

15.2.1 Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power,

regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Goodyear or any other governmental body upon or affecting Licensee, the ROW or Licensee's use of the ROW.

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

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

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

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

15.3 Building and other Permits. Licensee shall obtain at its own expense all building or other permits in connection with all construction performed by Licensee, shall comply with all zoning, building safety, fire, pavement and curb cut and restoration, and similar laws and procedures of every description and shall pay all fees, charges and other amounts pertaining thereto.

15.4 Dry Utility Permit. This Agreement is incorporated by reference into any "dry utility permit" obtained by the Licensee to the extent of allowing the Private Plant to exist on the ROW but not to allow any construction or other work of any description in the Use Areas or to allow obstruction of traffic or alternation of Licensors improvements. Before performing any work on the ROW, Licensee shall obtain the following additional encroachment permits, as applicable:

15.4.1 Permission to Work in the ROW.

15.4.2 Permission to Alter City Improvements.

15.4.3 Permission to Obstruct Traffic.

15.4.4 Any other applicable permits regarding work in the ROW.

15.5 Taxes, Liens and Assessments. In addition to all other amounts herein

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

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

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

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

XVI. ASSIGNABILITY

16. Assignability. Licensees may not assign, sell or transfer its interest in this License without the Licensor's consent. Licensor's consent will not be unreasonably withheld if the assignment is to an entity which acquires all or substantially all of the Licensee's assets.

XVII. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

If to Licensor: City Manager
 City of Goodyear
 190 N. Litchfield Rd.
 Goodyear, AZ 85338

Copy to: City Attorney City of Goodyear
190 N. Litchfield Rd.
Goodyear, AZ 85338

If to Licensee: Attn: Chief Legal Officer
5600 Arapahoe Ave. #200
Boulder, CO 80303
Phone: 303-725-8815
Email: scott.beer@wyverd.com

With a copy to: Attn: Chief Financial Officer
5600 Arapahoe Ave. #200
Boulder, CO 80303
Phone: 303-725-8815
Email: scott.beer@wyverd.com

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

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

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

17.11 Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. If funds necessary to fulfill Licensor's obligations under this Agreement are not appropriated by the Goodyear City Council, Licensor may terminate this Agreement, by notice to Licensee. Licensor shall use best efforts to give notice of such a termination to Licensee at least thirty (30) calendar days

prior to the end of Licensor's then current fiscal period. Termination in accordance with this provision shall not constitute a breach of this Agreement by Licensor. No person will be entitled to any compensation, damages or other remedy from Licensor if this Agreement is terminated pursuant to the terms of this subsection.

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

17.13 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Licensor shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.

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

17.15 Attorneys' Fees. If any action, suit or proceeding is brought by either party hereunder to enforce this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs (as determined by the court (and not a jury) in such proceeding).

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

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

17.18 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership,

joint venture or similar relationship between the parties.

17.19 Recording. This Agreement shall not be recorded.

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

17.21 Immigration Requirements. To the extent applicable under A.R.S. § 41-4401, Licensee warrants compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Licensee's breach of the above-mentioned warranty shall be deemed a material breach of the license.

17.22 No Israel Boycott. In accordance with applicable law by entering into this Agreement, Licensee certifies that it is not currently engaged in, and agrees that for the duration of this Agreement to not engage in a boycott of Israel.

EXECUTED as of the date first given above.

By: _____

Its: _____

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Julie Karins
Its: City Manager

Attest:

Darcie McCracken, City Clerk

Approved as to Form:

Roric Massey, City Attorney

Exhibit A

Letter of Credit Standards

- Issued by a commercial bank acceptable to the City. The bank must meet the following **minimum** requirements:
 - o Chartered under the laws of the United States, any state thereof or the District of Columbia and which is insured by the Federal Deposit Insurance Corporation;
 - o Licensed lender in the State of Arizona
 - o Long-term, unsecured and unsubordinated debt obligations are rated in the highest categories by either Moody's Investors Service, Inc. (Moody's) or Standard & Poor's Ratings Service (S&P) or their respective successors. Which Shall mean:
 - Moody's (www.moodys.com): Aaa, Aa1, Aa2, Aa3, A1 or A2
 - S&P (www.spglobal.com/ratings): AAA, AA+, AA, AA-, A+ or A
 - o If at any time the Letter of Credit Issuer Requirements are not met, or if the financial condition of such issuer changes in any materially adverse way, as determined by the City in its sole discretion, then a replacement Letter of Credit which meets the requirements must be provided to the City within five (5) days of receiving written notice from the City.

Letter of Credit Format

- The **Beneficiary** must be the City of Goodyear
- The **Amount** must be ten thousand dollars (\$10,000).
- The **Principal** must be the Licensee who is a signatory to the License Agreement.
- The **Bank Name & Address** upon which payment would be drawn must be clearly stated on the face of the document.
- The **Text identifying the License agreement** must be detailed and reflect the specific agreement number
- The **Expiration Date** will be a minimum of two years. The Expiration Date must automatically extend for one year without amendment unless at least thirty (30) days prior to any such expiry date issuer notifies the City of their election not to extend.
- The **Presentation of Draft** requirement will be drawn on a local branch or presentable at a correspondent bank within Maricopa County.
 - o If located outside Maricopa County presentation by Fax or other Electronic means must be explicitly allowed
- The text must contain a **Partial Draft Clause** that clearly indicates partial draft draws are permissible.

Exhibit B

IN-KIND EXCHANGE AGREEMENT – Zona Wyyerd

The Annual Fee described above in Section III (Licensee's Payment) shall be offset in its entirety by the value of the following:

- (1) Two (2) pair of fiber strands within Licensee's backbone network within Goodyear;
- (2) One (1) pair of fiber strands from Licensee's backbone into the arterial of each neighborhood on Licensee's network; (collectively (1) and (2) are referred to as "City Fiber")
- (3) One (1) empty "18/14mm future path micro duct" conduit within four (4) segments totaling approximately 31,000 linear feet within Licensee's network ("City Conduit").
- (4) Licensee's construction costs associated with this in-kind exchange shall be assumed by Licensee throughout the term of this Agreement and shall not be passed along to City of Goodyear residents.

The above City Fiber and City Conduit shall be installed in Licensee's fiber network. The City Fiber and City Conduit is further described and depicted on the network map attached as Exhibit C. Both the City Fiber and City Conduit are for Licensors's sole and exclusive use. The City Fiber, City Conduit, and waiver of build-out costs shall be treated as fair and reasonable compensation for Licensee's use of the Licensors's ROW for Licensee's fiber network during the initial Term of the ROW License and each and every renewal term.

Licensors shall have an indefeasible right of use (IRU) in the City Fiber and City Conduit for the Term of this Agreement and any subsequent renewals. If the Agreement expires, terminates and/or is not renewed, then the City Fiber IRU will terminate if and when Licensee's ROW License with the City expires, terminates and/or is not renewed. If the Agreement expires, terminates (other than for Licensors's breach) and/or is not renewed, then the City Conduit IRU will continue and Licensors shall be responsible for maintaining the conduit and continued use for government purposes.

Licensee will construct twelve (12) handhold access points for the Licensors within the City Conduit. Future access points may be mutually agreed upon between the Parties. These hand-off and access points shall be detailed in and mapped out on Exhibit C. In addition, Licensors shall have the right to access it's City Fiber via Licensee's fiber access points; provided that such access is supervised by Licensee and City provides seventy-two (72) hour advance notice for ordinary maintenance items and at least four (4) hour advance notice for any emergency maintenance items. Licensee is only required to provide Licensors a fiber tail at each vault location as specified on Exhibit C or as otherwise mutually agreed. A request may be made by the Licensors to add access points and/or fiber tails at existing vault locations in the future at City's expense.

Licensee shall provide Licensors prompt access to the City Fiber and City Conduit within (60) days after each segment is completed. Licensee shall notify Licensors of segment completion.

Prior to handing off the City Fiber and City Conduit, Licensee shall verify that both have been installed and ready for use and permit Licensors staff the opportunity to inspect both upon request. All City vaults and City Fibers shall be identified with tags or labels.

Limitation of Use of City Fibers and City Conduit.

Licensors warrants and covenants that it will use City Fiber and City Conduit in compliance with all applicable government codes, ordinances, laws, rules and regulations.

Licensors use of City Fibers and City Conduit shall be for government use only. Licensors may allow other government entities to utilize the City Fiber and City Conduit. Licensors may allow other third-parties to access and utilize City Fiber and City Conduit on behalf of the Licensors and only in support of such government use. For the avoidance of doubt, allowable government use does not include the use of City Fiber or City Conduit for the purpose of establishing or facilitating a City of Goodyear fiber to home build-out network. The Licensors is prohibited from leasing or otherwise transferring the City Fiber and/or City Conduit to any non-governmental third party.

Subject to the limitations set forth in this Agreement, Licensors may use the City Fibers and City Conduit for any lawful purpose.

Both parties shall promptly notify each other of any known matters pertaining to, or the occurrence (or impending occurrence) of, any event which would likely give rise to any damage or impending damage to or loss of licensee's fiber network.

Licensee shall maintain the City Fibers and City Conduit consistent with how it maintains the rest of Licensee's network and no less than in good operating condition for normal use. Licensee makes no other warranties, written or oral, statutory, express or implied, including, without limitation, the warranty of merchantability or fitness for a particular purpose or use regarding the provided fibers. If Licensors requests Licensee to provide any additional operations and maintenance (O&M) services in addition to Licensee's ordinary course O&M of its network, including additional access points and/or conduit or fiber extensions, then such additional network work will be at Licensors expense and covered by a separate agreement mutually negotiated in good faith.

Additional Routes.

If Licensee expands its fiber network within the Licensors ROW beyond the map contained in Exhibit C, then Licensee and Licensors shall negotiate in good faith to see if an in-kind exchange, in lieu of the annual license fee, is acceptable for both parties regarding the additional network areas.

Technical infrastructure details (e.g. handhold sizes, the manufacturer of the conduit and fiber, etc.) associated with the transfer of and access to City Fiber and City Conduit may be memorialized in a subsequent amendment to the Agreement. Both parties agree to act in good faith in memorializing, within 90 days after the execution of this agreement, the necessary technical infrastructure details associated with City Fiber and City Conduit. If the parties are unable to memorialize the technical infrastructure

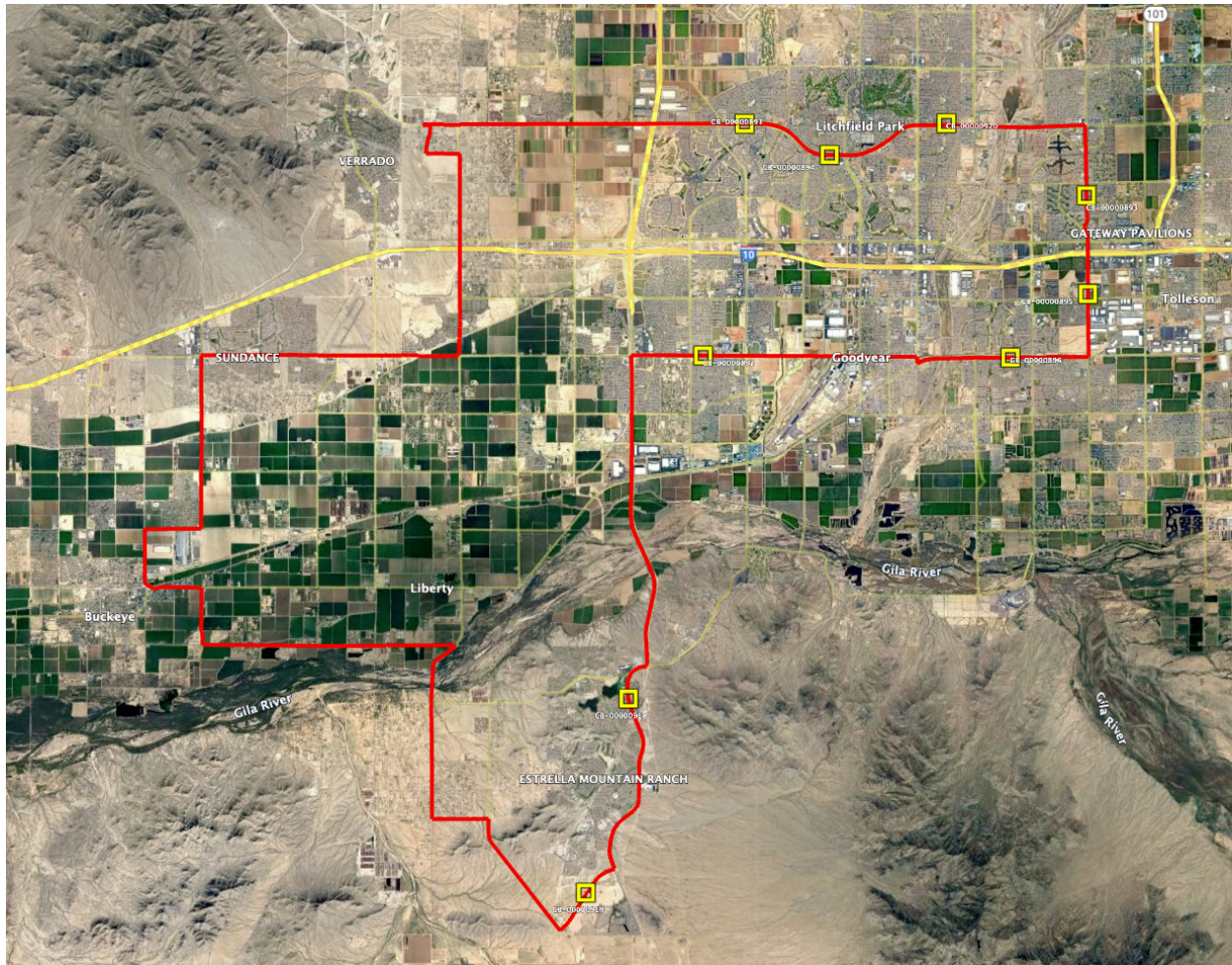
details then the .89 cents linear fee will be applicable instead of the in-kind exchange and Licensor shall have no rights to or use of the City Fiber and City Conduit.

For future builds, Licensee shall provide Licensor opportunity to participate in joint builds at a pro-rata costs pass through to the City, provided that Licensee shall have sole control and direction over engineering and construction related to such joint builds. City may request verification of pro-rata costs.

EXHIBIT C LOCATION MAPS

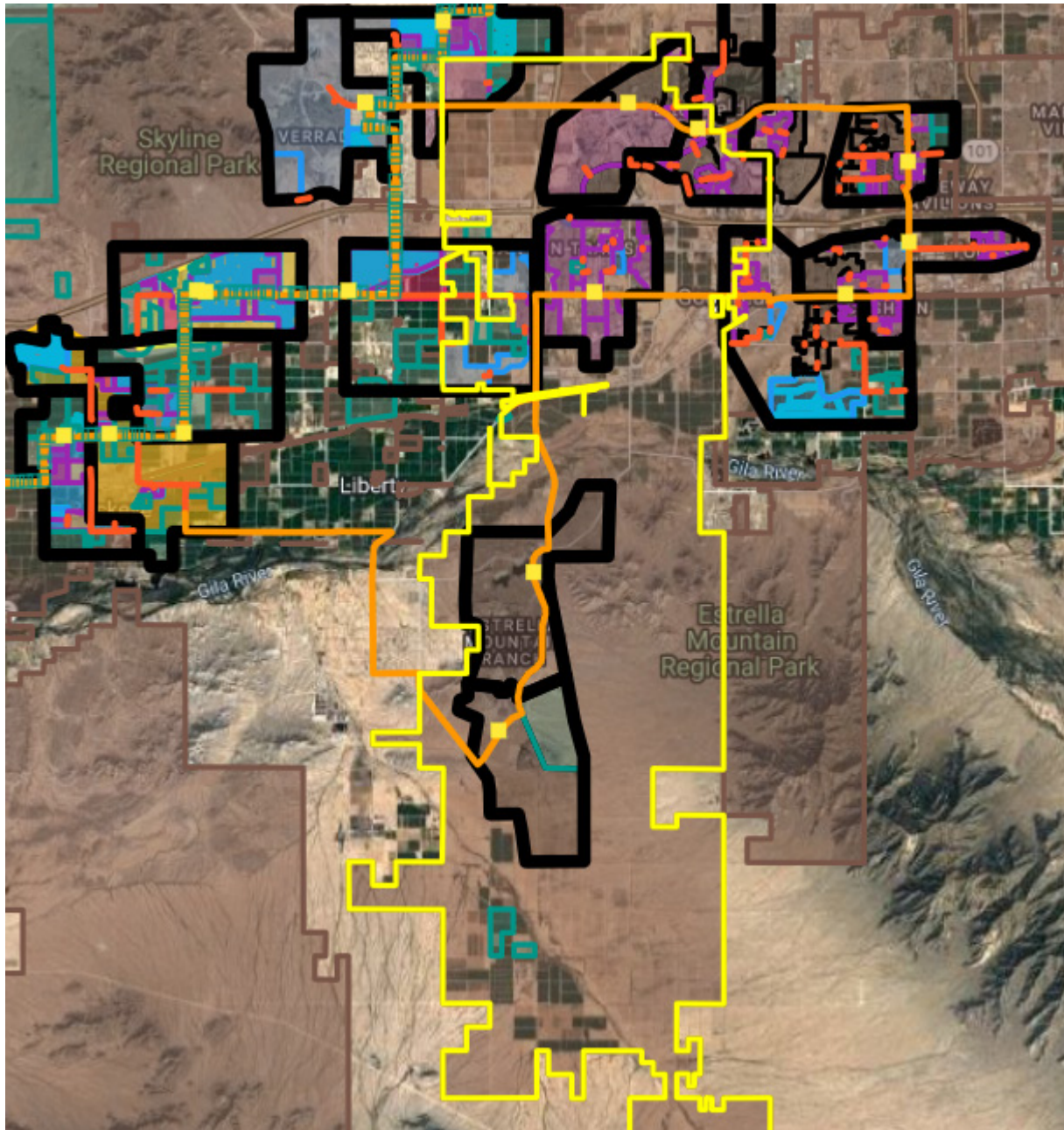
BACKBONE NETWORK

City to Receive 2 Pairs of Fiber in Backbone Network – Within Goodyear City Limits



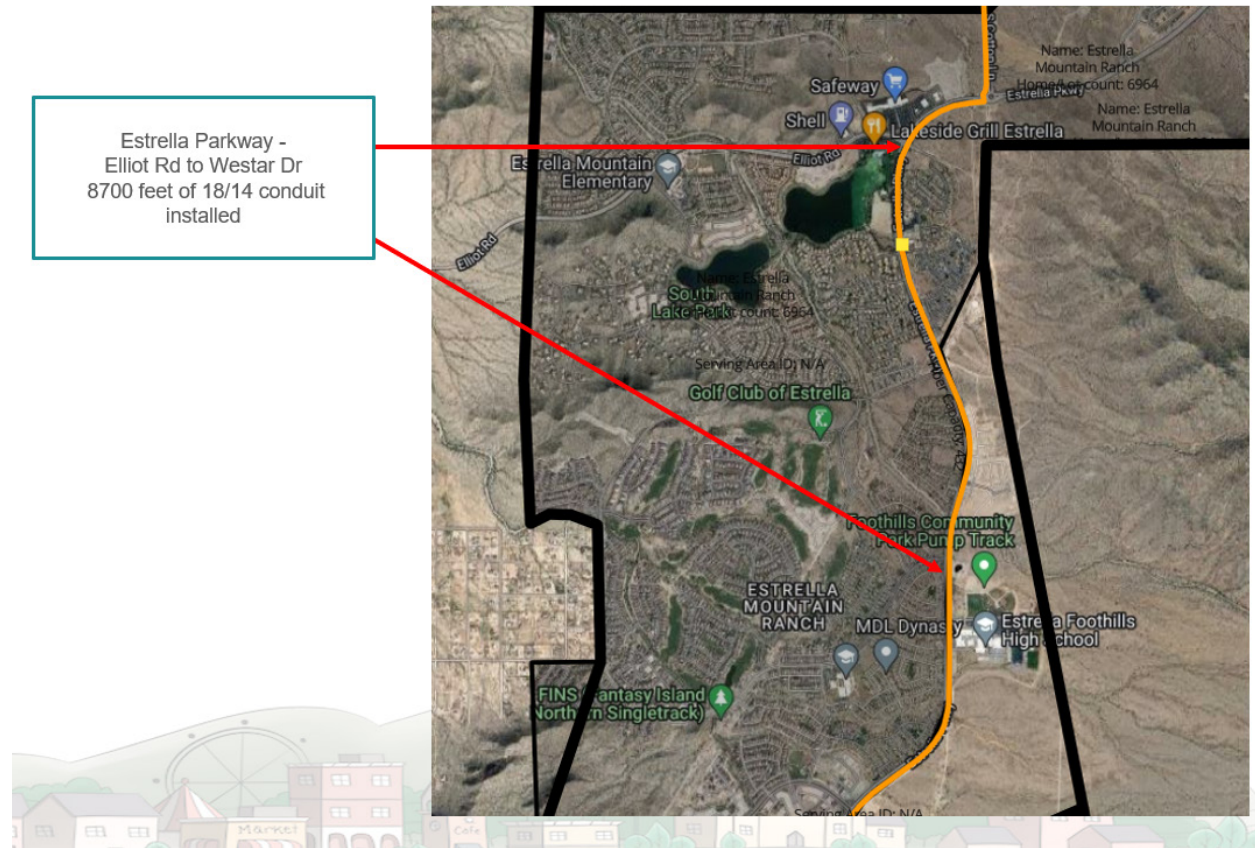
PRELIMINARY NEIGHBORHOOD NETWORK

City to receive 1 Pair of Fiber in Neighborhood Arterial Connections
(Depicted in Dark Orange) - Within Goodyear City Limits
Additional Areas will be added as design progresses

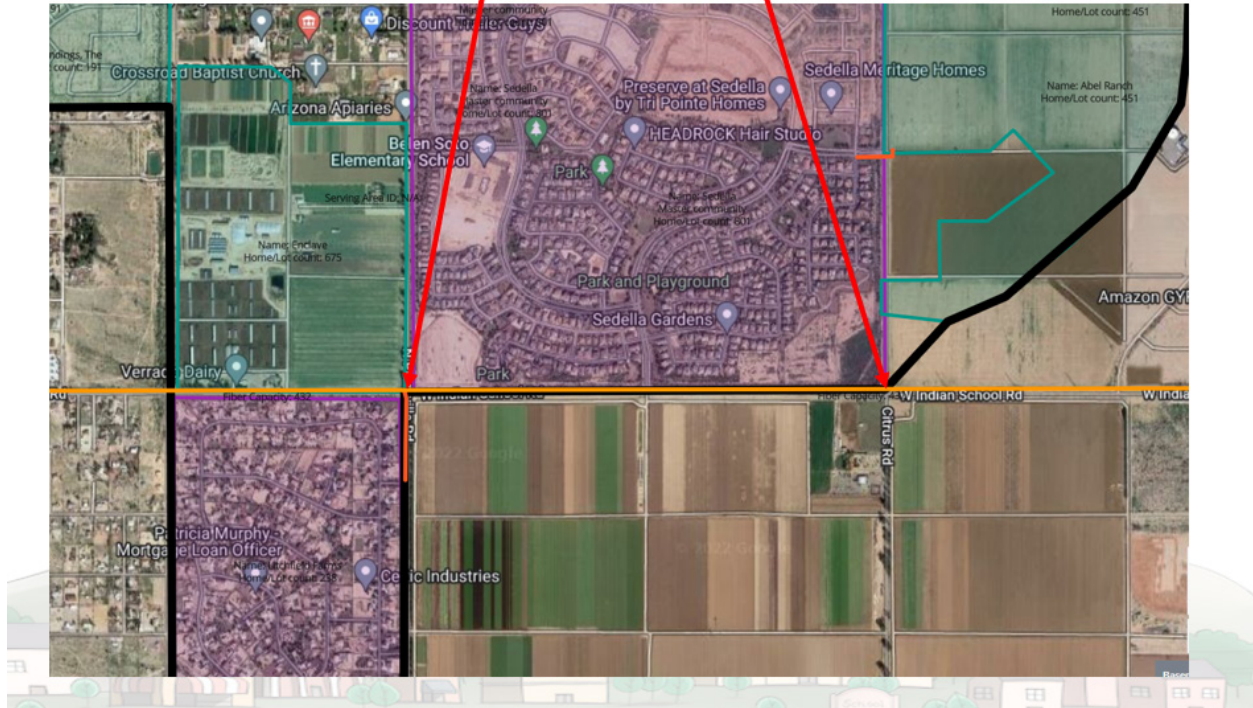


MICRO DUCT CONDUIT LOCATION MAPS

Minimum of 12 Handhold Locations will be added as design progresses.



Indian School Road – Perryville
Road to Citrus Road
5280 feet of 18/14 conduit
installed



Rainbow Valley Rd-
Willis Rd to Ray Road
124761 feet of 18/14 conduit
installed

