

COMMUNICATIONS LICENSE

This License is issued by the City of Maricopa (hereinafter called "Licensor" or "City"), an Arizona municipal corporation, to Fatbeam, LLC, a limited liability company registered in the state of Washington (hereinafter called "Licensee").

A. WHEREAS, Licensee has applied to the City for a License for the installation, placement, operation and maintenance of an underground optical fiber based, communications network in, on, under, upon, along and across certain public rights-of-way and easements within the City;

B. WHEREAS, Licensee intends to utilize its facilities to provide interstate and lit services, and Licensee has obtained a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("ACC");

C. WHEREAS, by such authority as may be conferred by state and federal law and Maricopa City Code, the City is issuing this License;

D. WHEREAS, the City Council has authorized the City Manager or his designee to execute a license with Licensee to construct, install, operate, and maintain a Communications Network (as defined below) in, on, under, upon, along and across certain public rights-of-way and easements within the City; and

E. WHEREAS, if used in this Agreement, "Party" means either Licensor or Licensee; and "Parties" means both Licensor and Licensee.

NOW, THEREFORE, the Licensor hereby grants to the Licensee the License as follows:

SECTION 1. License Granted.

1.1 There is granted to Licensee a revocable and nonexclusive license to construct, repair, maintain, replace, operate, lease, install, remove, and upgrade, in, on, under, upon, along and across the public rights-of-way and easements in the City limited to a maximum six (6) inch diameter construction pathway, the location of which is specifically identified in the map attached as Exhibit A, a fiber optics communications network, facilities, conduit, innerduct, fiber optic cables, carrier pipe, pedestals, cabinets, manholes, splicing and hand holes, vaults and appurtenances necessary for use and operation of the system (not including a cable system or cable operator as those terms are defined in the Communications Act of 1934, state law or the Maricopa City Code under any circumstances and not including local exchange telephone service or competitive access provider service except as provided by a person or entity that has all grants, permits, licenses and other authorizations required by the City and other applicable law to provide local exchange telephone service or competitive access provider service) (collectively the "Communications Network"), subject to the applicable provisions of this license, the City Code, and any future amendments to the City Code, together with all applicable laws and reasonable regulations of any regulatory agency having competent jurisdiction (the "License").

1.1.1 For the purposes of this License, Communications Network does not include a "Multichannel Video System" as defined below.

1.1.2 Multichannel Video System includes:

- (a) A "cable system," as such term is defined in Title VI of the Federal Communications Act of 1934, providing service within the City;
- (b) An "open video system," as such term is defined in Title VI of the Federal Communications Act of 1934 and implementing regulations, providing service within the City;
- (c) Any other system providing Multichannel Video Service within the City, where such service is transmitted in whole or in part via wires or lines that are in or cross any public highways, right-of-way, public streets or public utility easements within the City. The preceding sentence shall apply whether the provider owns, leases or otherwise obtains the right to use such wires or lines, including wires or lines of a telecommunications provider used pursuant to tariff or otherwise for such purpose;
- (d) Any other system providing Multichannel Video Service within the City where a license or similar permission or approval from City is required under applicable law; and
- (e) For purposes of this License, "Multichannel Video Service" means multiple channels of video programming where some or all of the video programming is generally considered comparable to programming provided by a television broadcast station or by a direct to home satellite service. Multichannel Video Service specifically includes, but is not limited to, "cable service" as such term in Title VI of the Federal Communications Act of 1934.

1.2 If it is necessary for the Licensee to comply with any law or regulation of the Federal Communications Commission ("FCC") or the ACC to engage in business activities associated with use of the public highways and public rights-of-way to provide Telecommunications Services or Interstate Telecommunications Services as appropriate, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License. Provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this License without a written modification to this License.

1.3 This License does not allow one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmissions, any one or more of which may be subject to a cable television license. For purposes of this License, "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services or cable services as defined by Arizona Revised Statutes § 9-581.

SECTION 2. Conditions. Indemnity. Fees and Charges.

2.1 The Communications Network constructed, installed, operated, leased and repaired, replaced and/or maintained pursuant to this License shall be constructed, installed, operated, leased and repaired, replaced and/or maintained in accordance with applicable governmental established practices including, without limitation, the City of Maricopa, the State of Arizona and any other governmental entity with jurisdiction with respect to public rights-of-way and easements, and the public rights-of-way and easements under the control of the City shall be used according to plans approved by the City Engineer. Prior to the installation, construction, erection, enlargement, replacement, extension or relocation of any portion of the Communications Network authorized herein, the Licensee shall apply for and obtain from the City a Right-of-Way Use Permit for such work on the Communications Network and submit an application per the City published application process. The City shall issue such permits to the Licensee on such conditions as are reasonable and necessary to insure compliance with the terms and conditions of this License. All work on the Communications Network, Communications Network Expansion (defined in Section 2.23.1, below) City Network (defined in Section 2.22 below) and Expanded City Network (defined in Section 2.23.1 below) will be performed in compliance with applicable City policies, the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments (“MAG”) as amended, Maricopa’s Design Standards, National Electric Code (NEC), National Electric Safety Code (NESC), and OSHA regulations. Licensee shall retain an independent testing company, subject to approval by City in its reasonable discretion, to test all materials outlined by MAG and the City supplements to MAG that will be used in construction of the Communications Network, Expanded Communications Network, City Network and Expanded City Network.

2.2 The Communications Network to be constructed, installed, operated, leased and repaired, replaced and/or maintained, upgraded and removed under this License, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within public rights-of-way and easements. Those phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of the Communications Network shall be subject to the reasonable regulation by the City Engineer and the permitting process of the City.

2.2.1 Licensee shall submit for a right-of-way use permit together with the details, plans and specifications for City review and approval, and pay all applicable application, material testing, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this License including the installation, operation, maintenance, location and attachment of any and all of the Communications Network. The proposed locations of Licensee's planned initial installation of its Communications Network including related facilities or equipment is generally depicted on Exhibit A and shall be depicted more specifically on engineering drawings provided to the City with the submittal of the plans and specifications during the permitting process.

2.2.2 Although the exact placement and location of Licensee's Communications Network shall be determined by City through the permit process, Licensee has expressed its intent and City

has expressed its desire to have the Communications Network installed outside of the paved street areas whenever such location is feasible and reasonable. Further, it is the intent and desire of both Parties that when it is necessary for the Communications Network to intersect City streets or be placed under paved areas, Licensee shall use directional boring under such streets when feasible and reasonable. Except where specifically authorized by the City Engineer, all portions of the Communications Network shall be installed below grade. Any installation of new poles by Licensee shall be specifically approved in writing by the City Engineer. No attachment to existing infrastructure or poles allowed, including aerial over lashing, unless specifically approved in writing by the City Engineer.

2.3 If Licensee damages or disturbs the surface or subsurface of any public right-of-way, easement or adjoining public property or any public improvements or facility and such damage is not the result of inaccurate location marking by the City, Licensee shall promptly, at its own expense, and in a manner reasonably acceptable to the City, repair the damage or disturbance. If the Licensee fails to complete such repair within a reasonable time or in a manner reasonably acceptable to the City, then City may perform such repair and Licensee shall pay all the reasonable and fully documented direct costs expended in such repair of such City facility. It is hereby acknowledged that severed City owned fiber must be completely replaced to nearest previously existing splice point by Licensee.

2.4 In the event of a public emergency, City shall have the right to sever, disrupt, or dig-up facilities of Licensee, after all reasonable efforts have been made, given the constraints of such public emergency, (i) to contact Licensee prior to any such action; and (ii) to reasonably avoid severing, disrupting or digging up the facilities of Licensee. City shall, where reasonable, work with Licensee in responding to the emergency.

2.5 Licensee shall bear the entire cost of timely relocating its Communications Network facilities located within public rights-of-way, public utility easement, and easements, the relocation of which is necessitated by the construction of public improvements by or on behalf of the City. However, to the extent that the City receives funds specifically for relocation of utility facilities in the public rights-of-way from any third parties or government entities for a project that requires the relocation of facilities owned, operated and/or maintained by the Licensee, the City shall allocate a portion of those funds to the relocation of Licensee's Communications Network facilities. Licensee shall be entitled to an allocation equal to the proportionate share of the Licensee's Communication Network to all other utility facilities in the affected public right-of-way that require relocation. If Licensee is required to relocate its Communications Network facilities due to the construction of a public improvement, the City shall provide Licensee with as much advance written notice as reasonably possible before any required action of Licensee to relocate affected portions of the Communications Network and shall cooperate with Licensee to identify a replacement and alternative public right-of-way for the relocation of affected portions of the Communications Network. Promptly after service of notice by the City, City and Licensee shall cooperate to agree upon a removal schedule and alternative public right-of-way for re-location of the affected portions of the Communications Network. Licensee shall promptly remove, as reasonably as possible, the designated portions of the Communications Network, and if requested by City, Licensee,

at its sole cost and expense, will restore the sidewalks and other City facilities within the rights-of-way damaged by Licensee's removal and relocation of the Communications Network. The City will make every reasonable effort to design and construct projects pursuant to this section so as to minimize relocation expenses to Licensee. The City will not exercise its right to require the Licensee's Communications Network to be relocated in an unreasonable or arbitrary manner. If a Licensee fails to relocate as required herein, the Licensee shall reimburse City for actual and direct damages incurred by the City as a result of such delays.

2.6 The License granted is for the Licensee only. Transfer of the License or any interest therein or control of the Communications Network is subject to the provisions of Section 7 *infra*. A material consideration of City in granting this License to Licensee is Licensee's experience, reputation, knowledge, and business track record.

2.6.1 This License authorizes Licensee, in its ordinary course of business to lease to or contract with others for use of all or part of the Communications Network, without further prior consent of the City, but only on the following conditions:

(A) Pursuant to A.R.S. 9-583(D), the City hereby requires Licensee to disclose all persons with whom it contracts to use its facilities in the public highways within the City to provide telecommunications services. In addition, any person using Licensee's facilities in the public highways within the City shall be required to obtain from the City a telecommunications license or franchise if the person constructs, installs, operates or maintains telecommunications facilities within the public highways of the City.

(B) Excluding those portions of the City Network (defined in Section 2.22 below) and Expanded City Network (defined in Section 2.23.1 below);

(C) In the event the lease or contract provides for the other entity to construct, install, operate or maintain any of the Licensee's Communications Network, no such arrangement shall proceed until the other entity enters into an agreement with the City for use of the City's Rights-of-Way; and

(D) Licensee's installation of the Communications Network shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along with Licensee's project as set forth in this Agreement. Provided, however, nothing herein shall require Licensee to incur any material additional expense to accommodate common installations. All installations shall be in conduit or innerduct as reasonably approved by the City Engineer.

(E) If aerial runs are approved by the City Engineer, all such runs of fiber in Licensee's Communications Network shall minimize the use of slack fiber and any such slack fiber used shall be first approved by City and then braced to the immediately adjacent pole if so approved.

2.7 In addition to the any applicable indemnity requirements set forth in the Maricopa City Code or in other City rules or regulations, the Licensee shall indemnify and hold harmless the

City its Mayor and Councilmembers, officers, agents, employees, boards, and commissions ("Indemnitees") from and against all claims, damages, losses and expenses of any nature, including reasonable attorneys' fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of or resulting from the acts or omissions of the Licensee, its officers, agents, employees, contractors, successors or assigns or the performance of work by the Licensee and its agents, employees and contractors pursuant to this License or the installation, operation or maintenance of the Communications Network authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this License, except to the extent such act or omission constitutes the sole negligence or willful misconduct of the Indemnitees. The amount and type of insurance coverage requirements set forth in this License will not be construed as limiting the scope of the indemnity stated in this section. In the event of any claim, demand or litigation specified in this section, the Indemnatee(s) shall give reasonable, prompt notice to Licensee of such claim, demand or litigation. Failure of the Indemnatee(s) to timely give such notice to Licensee shall relieve Licensee of its indemnity obligations hereunder to the extent it is prejudiced or damaged by such failure. Licensee shall have reasonable control of the defense of any action or litigation on such a claim or demand and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the Indemnatee(s)'s consent, which consent shall not be unreasonably withheld. The Indemnatee(s) shall cooperate with Licensee in the defense and/or settlement of any claim, demand or litigation at Licensee's expense. Nothing herein shall be deemed to prevent the Indemnatee(s) from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnatee(s)'s own counsel at the Indemnatee(s)'s own expense. No Indemnatee shall take any action to settle, to compromise or otherwise to make any payment, admission, or statement to or for the benefit of any third-party claimant without Licensee's written consent.

2.8 Licensee hereby agrees to indemnify the Indemnitees from and against all cost, damages and expenses incurred by the Indemnitees in the defense of any litigation brought by third parties challenging the right of the City to issue this License to Licensee under Arizona state law. In the event that any such litigation ensues, the City may, but is not required to, tender the defense of such litigation to Licensee, which shall then defend the litigation; provided, however, that if the City tenders such defense to Licensee, Licensee shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Licensee (and, where such terms obligate or affect the City, reasonably acceptable to City), or, at any time of its election, to terminate its License under the termination terms provided in the License and withdraw from any such litigation. In the event that any such litigation ensues, the City shall be reimbursed for all litigation costs incurred in defending any such action, including, but not limited to, costs of depositions, expert witnesses, exhibits and attorneys' fees and costs.

2.9 Licensee shall assume the risk of, and hereby relinquishes any claim against the City in connection with, any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory authority under Arizona law to issue this License.

2.10 The Licensee and Licensor agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the City did not have the authority

to issue a License to Licensee under Arizona law, then this License shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days' notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided herein.

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

2.12 Licensee shall pay the compensation required by the Maricopa City Code or other City rule or regulation, including without limitation, all required application and permit fees, and the applicable fees under the City's Schedule of Fees and Charges.

2.13 Attached hereto as Exhibit "A" is a map illustrating the location of Licensee's Communications Network. Licensee warrants that no portion of Licensee's Communications Network shall be dedicated exclusively to interstate traffic, as that term is used in Arizona Revised Statutes § 9-583(C)(2). If at any time Licensee cannot make such a warrant for any portion of Licensee's Communications Network, then that portion shall be subject to the per foot linear fee ("Per Foot Fee") set forth herein. The Licensee agrees that the current Per Foot Fee is \$2.03 and will be increased by the change to the annual average CPI each year thereafter effective on the anniversary of the License Date of each such year.

2.13.1 Payment of the annual Per Foot Fee owed by the Licensee to the City shall be made in United States legal tender. Payments shall be considered timely if postmarked on or before the due date. The "Due Date" shall be on the execution of this License Agreement and on or before the anniversary of the License Date, as defined below, each year thereafter. If License fees are not paid by the Due Date, interest of 1.0% per month shall accrue on the entire amount due. Any payment received shall first be applied to any interest charges owed, then to any penalty owed and then to any License fee owed.

2.13.2 As noted in Section 2.13 above, the annual Per Foot Fee shall be adjusted based on the percentage of change in the CPI for the previous License year. Any increase in fees will be referred to herein as the Adjusted Fees ("Adjusted Fees"). In no event shall the Adjusted Fees be less than the fees indicated in Paragraph 2.13 above. For purpose of this License, CPI is defined as the Western Region Consumer Price Index for All Urban Consumers, All Items as published by the Bureau of Labor Statistics (BLS), United States Department of Labor Base period 1993-95=100. Adjusted Fees

will be effective for the subsequent License year; the change in CPI will be calculated based on the change in the CPI for the previous License year. Inflation adjustments shall be calculated each subsequent anniversary of the effective date of the License.

2.13.3 Method of Calculation.

- a) The City shall compute Adjusted Fees. The following example illustrates calculation of the change factor for a twelve-month period ending in June 2007:

CPI June 2007	[161.0]
Less CPI July 2006 (prior year)	[157.9]
Change in CPI	3.1 = (161.0-157.9)
Divided by previous period CPI	0.0196 = (3.1/157.9)
Multiply by 100=percent change	1.96% (rounded to nearest .01 %)

- (b) The annual Per Foot Fee would then be multiplied by 1.96% to calculate the adjustment.
- (c) In the event that the BLS ceases publication of the specified CPI, the City and the Licensee shall determine an agreeable inflation index that most closely approximates the Western Region CPI for the remainder of the License.

2.14 Upon approval of the City Engineer or his/her designee, and subject to Licensee's payment of the additional annual Per Foot Fee owed based upon such expansion, and Licensee's compliance with all other obligations under this License, the Licensee may extend its Communications Network within the City's public highways, rights-of-way, public streets and ways and public utility easements or within the City's existing duct only if Licensee has first entered into a separate agreement with the City to use the City's existing duct at a fee ("Conduit Use Fee"), in addition to the Per Foot Fee, to be mutually agreed upon by the Parties. The City agrees to act reasonably in setting such Conduit Use Fee. Licensee shall request such approval from the City Engineer or his/her designee by submitting an application to the City Engineer or his/her designee identifying the specific public highways, public rights-of-way, public streets and public utility easements to which the Licensee seeks to extend its Communications Network. The City Engineer or his designee only shall have the authority to approve extensions of the Communications Network. The City Engineer will consider such requests in a reasonable manner provided the Licensee is not in breach of the terms of this License. Notwithstanding anything to the contrary in this License Agreement, if Licensee expands its Communications Network beyond that identified in Exhibit A, Licensee shall be subject to the payment of all applicable fees including, without limitation, the annual Per Foot Fee and all other terms in Paragraph 2.23.1 and such expanded facilities shall be a part of the Communications Network Expansion as defined in Section 2.23.1.

2.15 Except as provided by applicable City policy, Licensee may expand its Communications System within the City's public rights-of-way and easements beyond those identified on Exhibit A, only by obtaining a right of way permit from the City. The City Manager, or designee,

may grant, grant with conditions, or deny such approval in its sole discretion. Any expansion of the Communications Network approved by the City shall be subject to all terms and conditions of this License and the conditions set forth herein or in any applicable permit.

2.16 Prior to any extension of the Communications Network, the Licensee shall apply for and obtain from the City a permit and submit an application per the City's published application process.

2.17 If the FCC, Federal or State government, or the courts, in the future, permit the City to receive additional or different compensation for the use of the public rights-of-way to provide telecommunications services, the City and Licensee shall negotiate in good faith a mutually agreeable amendment to this License to include this compensation.

2.18 Any privilege claimed under this License by the Licensee in any public street or other public property shall be subordinate to any prior or subsequent occupancy or use by the City or any other governmental entity, and shall be subordinate to any prior lawful occupancy or use by any other person, and shall be subordinate to any prior easements; provided, however, that nothing in this License shall extinguish or otherwise interfere with property rights established independently of this License.

2.19 Whenever the Licensee shall cause any opening or alteration whatever to be made for any purpose in any public streets, public places, or property of third parties, the opening or alteration shall be completed and restored with due diligence within a reasonably prompt time. The Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed to a condition substantially comparable to the condition before the opening or alteration. The restoration shall be performed with due diligence within a reasonably prompt time.

2.20 Licensee shall maintain As-Built or record drawings of its facilities located within the public rights-of-way and public easements, and furnish one electronic copy in State Plane Coordinate System Arizona Central Zone, US feet North American Datum 1983 (NAD83) or CAD Format AutoCAD 2004 DWG or higher version to the City. Licensee shall cooperate with the City to furnish such information in an electronic mapping format compatible with the then current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the public highways, public right-of-way, public streets and public utility easements, Licensee shall provide the City with installation records in an electronic format compatible with the then current City electronic mapping format showing the location of the underground facilities. The Licensee shall comply with Arizona Revised Statutes §§ 40-360.21 et seq. by participating as a member of the Arizona Blue Stake Center (or other appropriate organization selected by the City) with the necessary records and persons to provide the location and identity of Licensee's underground facilities upon receipt of a locate call or as promptly thereafter as possible, but in no event later than two (2) working days after receipt of a locate call. A copy of the agreement or proof of membership shall be filed with the City.

2.21 Licensee shall maintain a local point of contact within Pinal County or adjacent county (Maricopa or Pima County), who is familiar with the Licensee's facilities and who is responsible for satisfying the information needs of the City and other right-of-way users. Licensee

shall be available to employees of any City department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its System. City may contact by telephone the control center operator at the following phone number 855-979-8844 regarding such problems or complaints.

2.22 In the event Licensee's Communications Network becomes subject to an annual Per Foot Fee, as provided in Section 2.13, Licensors and Licensee agree to negotiate in good faith an agreement whereby Licensee will furnish and install City Network (conduit, fiber, and fiber splicing) as shown on Exhibit B, or as revised at the time of such negotiation, in consideration for a credit against annual Per Foot Fees or applicable taxes due and payable to City by Licensee for the Communications Network for a five-year duration. City and Licensee agree that all work performed, tangible and intangible items comprising the City Network, including all physical facilities, plans, records, and other items related to the City Network, and all title and ownership of the City Network at all times are and shall be in and to the City and property of the City. Licensee shall have no rights in the City Network and to the property comprising the City Network.

2.23 In the event Licensee's Communications Network becomes subject to an annual Per Foot Fee, as provided in Section 2.13, the annual Per Foot Fee shall be due as provided in Section 2.13.1 and is payable on or before the Due Date. City and Licensee agree that Licensee's construction of the City Network for the City as described in Exhibit B, shall constitute a credit against, and complete and full payment of, any and all annual Per Foot Fees or applicable taxes due and payable to City by Licensee for the Communications Network for the initial five-year term under this License Agreement. Licensee shall have no right to payment from the City for the costs associated with the construction and installation of City Network or any other amounts expended in creating the City Network and City at all times shall maintain sole ownership and control over the City Network. Notwithstanding anything to the contrary in this License, including all attachments hereto, City shall owe no monies for the City Network and the only compensation due to Licensee for the City Network shall be through the credits against annual Per Foot Fees provided for in this Section 2.23. Notwithstanding anything to the contrary in this Section 2.23.1 or this License Agreement, if Licensee extends its Communications Network ("Communications Network Expansion") beyond what is identified in Exhibit A attached hereto, Licensee shall (1) pay any applicable annual Per Foot Fee or applicable taxes for Licensee's Communications Network Expansion commencing at the time Licensee obtains a permit for such Communications Network Expansion, or (2) if mutually agreed upon by Licensee and City, provide an in-kind expansion of the City Network ("City Expanded Network") to be agreed upon at the time Licensee applies for Communications Network Expansion. City and Licensee agree that all work performed, tangible and intangible property comprising the City Network, including all physical facilities, plans, records, and other items related to the City Network, and all title and ownership of the Expanded City Network at all times will be in and to the City and property of the City. Licensee shall have no rights in the Expanded City Network and to the property comprising the Expanded City Network. Notwithstanding anything to the contrary in this License Agreement, to the extent practicable, Licensee agrees that it shall install and construct the Expanded City Network at the same time as it installs and constructs the Communications Network Expansion. City and Licensee agree that Licensee's construction of the Expanded City Network for the City as described in this Section

2.23.1 and Exhibits to be mutually agreed upon and administratively approved by the City Engineer, shall constitute a credit against payment of annual Per Foot Fees due and payable to City by Licensee for the Communications Expansion Network under this License Agreement. Licensee shall have no right to payment from the City for the costs associated with the construction and installation of the Expanded City Network or any other amounts expended in creating the Expanded City Network and City at all times shall maintain sole ownership and control over the Expanded City Network. Notwithstanding anything to the contrary in this License, including all attachments hereto, the only compensation due to Licensee for the Expanded City Network shall be through the credit against annual Per Foot Fees provided by this Section 2.23.1.

2.24 The City may confirm Licensee's compliance with the terms of this License by requesting the opportunity to inspect records of the Licensee. In order for the Licensor to determine the Licensee's compliance with the terms of this License, within ten (10) days of notice by Licensor of a request for disclosure, the Licensee shall provide relevant documentation as requested by Licensor including, but not limited to, regular reports as needed to establish Licensee's compliance with the various requirements and other provisions of this Agreement. Upon reasonable notice by Licensor, the Licensee shall make available for joint inspection and testing as requested by Licensor, the current services being provided by Licensee through the facilities authorized by this License. Such information may include Licensee's documentation of what services the Licensee is offering its customers. Upon request, Licensee shall provide to City copies of any communication locations and reports submitted by Licensee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this License. If the Licensee determines that in order to respond to Licensor's request for documentation and inspection that it must reasonably provide proprietary information, the Licensee shall so designate such claim to proprietary treatment on documents provided to Licensor.

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

2.26 Proprietary Information disclosed by the Licensee to the City or its constituent departments shall be regarded as proprietary as to third parties. If the City receives a request to disclose Proprietary Information, the City shall notify Licensee of the request and allow Licensee a reasonable opportunity to defend its information from disclosure.

2.27 Notwithstanding any provision in this License, the Licensee acknowledges and understands that Licensor is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. §§ 39-121 et seq.)

2.28 The Parties agree that this License is intended to satisfy the requirements of the applicable laws, administrative guidelines, rules, order and ordinances (collectively referred to as the "Applicable Law"). Accordingly, any provision of this License which conflicts with the Applicable Law shall be invalid and unenforceable, whether occurring before or after execution of this License, it being the intention of the Parties: (i) to preserve their respective rights and remedies

under the Applicable Law; and (ii) that the execution of this License does not constitute a waiver of any rights or obligations by either Party under the Applicable Law. In the event that a provision is invalid and unenforceable, all other provisions shall remain in full force and effect. Both the City and Licensee expressly reserve all rights they may have under law to the maximum extent possible; neither the Licensors nor the Licensee shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this License.

SECTION 3. Performance Bond: Security Fund. Permitting, and Insurance.

3.1 The Licensee shall file and maintain until completion of the construction of the Communications Network described on Exhibit A a faithful performance bond in favor of the City in the sum of One Hundred Thousand Dollars (\$100,000.00) to guarantee that the Licensee shall well and truly observe, fulfill and perform each and every term of this License. In case of any breach of any condition of this License, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate the City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Licensee, as principal, and by a corporation licensed by the Arizona Insurance Commissioner to transact the business of a fidelity and surety insurance company, as surety, and said bond shall be approved by the City. Once Licensee has completed the construction of the Communications Network, Licensee may seek to have the bond released by written request to City. City will, within thirty (30) days of such request, inspect the Communications Network and approve such release or provide Licensee with a determination of why such release was denied.

3.2 Prior to applying for any permit to construct, install, maintain or perform any work in the public highways or public rights-of-way which requires a construction permit from the City pursuant to applicable City Codes, the Licensee shall deposit into a suitable interest-bearing account, established by the Licensors, and the Licensee shall maintain on deposit through the term of this License, the sum of not less than Fifty Thousand Dollars (\$50,000.00) ("security fund"), as security for the faithful performance by it of all the provisions of this License, and compliance with all orders, permits and directions of any agency of the Licensors having jurisdiction over its acts or defaults under the License issued pursuant thereto, and the payment by the Licensee of any claims, liens and taxes due the Licensors which arise by reason of the construction, operation or maintenance of the facilities. Licensors shall have the full power of withdrawal of funds from the account except that all interest accrued shall be payable to the Licensee on demand. No withdrawals shall be made from the security fund account without the prior written approval of the City Manager and prior written notice of intent to withdraw to Licensee.

3.3 Within thirty (30) days after notice to Licensee that any amount has been withdrawn by the Licensors from the security fund pursuant to Subsection 3.2 above, the Licensee shall deposit a sum of money sufficient to restore such security fund to the original amount. Licensee grants to Licensors, to the broadest extent allowed under law, all rights of setoff and recoupment with regard to the funds in the security fund and the bond with regard to any claims, counterclaims, or other rights of the City arising under or related to this License.

3.4 If the Licensee fails, within ten (10) business days of a notice of intent to withdraw from the security fund, to pay to the Licensors any taxes or fees due and unpaid; or fails to repay to the Licensors, within such ten (10) business days of such notice, any damages, costs or expenses

which the Licensor shall be compelled to pay by reason of any act or default of the Licensee in connection with this License; or fails, within thirty (30) days of such notice of failure by the Licensor to comply with any provision of the License which the Licensor reasonably determines can be remedied by an expenditure of the security fund, the Licensor may immediately withdraw the amount thereof, with interest from the security fund. Upon such withdrawal, the Licensor shall notify the Licensee of the amount and date thereof.

3.5 The Licensee shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the License, or upon termination of the License at an earlier date, provided that there is then no outstanding default on the part of the Licensee.

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

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

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

3.9 Before the start of construction or repair work (other than emergency repairs) within public rights-of-way, easements or City-controlled property, Licensee shall submit plans to the Development Services Department for its review and approval. These plans shall show the proposed location of facilities to be constructed in relation to the location of other known adjacent conduit and facilities, and shall be prepared and submitted in accordance with Maricopa's permit process for securing a permit for utility construction in the public right-of-way and easements. At the time of construction, the constructor shall obtain a right-of-way use permit, which shall be in addition to the costs of any other permit, license or other documents required by existing applicable federal, state or local laws. During construction, the City will inspect all trenching, backfilling, surface restoration and other related items and Licensee shall reimburse the City its actual, reasonable and documented inspection and material testing costs.

3.10 For any costs above standard permitting fees, Licensee shall pay the City Development Services Department the amount billed monthly for the actual fully documented direct cost of the City's inspection and review services incurred during the previous month due to construction activities of the Licensee in the public right-of-way. The amount shall be due within thirty (30) days of receipt of the monthly billing. Licensee shall have the right during regular office hours to

examine and to make copies of the City accounting records on time and cost incurred for inspection services provided to Licensee for work in the public right-of-way.

3.11 Licensee shall be responsible for maintaining accurate and current records of the location of all facilities and furnish this information upon request to the City.

3.12 Insurance. General Requirements.

3.12.1 Licensee, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section with companies possessing a current AM. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City.

3.12.2 All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this License is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement and may result in termination of this Agreement.

3.12.3 If any of the insurance policies are not renewed prior to expiration, payments to the Licensee may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the Licensee.

3.12.4 All insurance policies, except Workers' Compensation and Professional Liability required by this License, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this License, City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

3.12.5 Licensee's insurance shall be primary insurance over any insurance available to the City and as to any claims resulting from this License, it being the intention of the Parties that the insurance policies so effected shall protect both Parties and be primary coverage for any and all losses covered by the described insurance.

3.12.6 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials and employees for any claims arising out of the Licensee's acts, errors, mistakes, omissions, work or service.

3.12.7 The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of the Licensee shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. City, at its option, may require Licensee to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions of up to \$1,000,000.00 (One Million Dollars) shall be accepted.

3.12.8 All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to City.

3.12.9 Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Licensee with reasonable promptness in accordance with the Licensee's information and belief.

3.12.10 In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under this License, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the Licensee until such time as the Licensee shall furnish such additional security covering such claims as may be determined by the City.

3.13 Proof of Insurance-Certificates of Insurance.

3.13.1 Prior to commencing work or services under this License, Licensee shall furnish to City Certificates of Insurance issued by Licensee's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this License are in full force and effect and obtain from the City's Risk Manager approval of such Certificates.

3.13.2 If a policy does expire during the life of this License, a renewal certificate must be sent to the City five (5) days prior to the expiration date.

3.13.3 All Certificates of Insurance shall identify the policies in effect on behalf the Licensee, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of this License. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

3.13.4 City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Licensee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Licensee from, or be deemed a waiver of City's right to insist on, strict fulfillment of Licensee's obligations under this License.

3.14 Required Coverage.

3.14.1 Such insurance shall protect Licensee from claims set forth below which may arise out of or result from the operations of Licensee under this License and for which Licensee may be legally liable, whether such operations be by the Licensee or by a subconsultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

3.14.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees.

3.14.3 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom.

3.14.4 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom.

3.14.5 Claims involving contractual liability insurance applicable to the Licensee's obligations under the Indemnification Agreement.

3.15 Commercial General Liability- Minimum Coverage Limits.

3.15.1 The Commercial General Liability Insurance required herein shall be written for not less than \$5,000,000.00 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000.00 per occurrence and an aggregate of \$10,000,000.00 in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be broad as the Insurance Services, Inc.'s (ISC) Additional Insured, Form B, CG 2010i001, and shall include coverage for Licensee's operations and products, and completed operations.

3.16 Worker's Compensation and Employer's Liability.

3.16.1 Licensee shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1 million for each accident, \$1 Million disease coverage for each employee, and \$1 Million disease policy limit. In case any work is subcontracted, Licensee's will require the SubLicensee to provide worker's compensation and Employer's Liability to at least the same extent as required by Licensee.

3.17 Automobile Liability.

3.17.1 Licensee shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1 Million each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the Licensee's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MSC 90 endorsement shall be included with coverage limits of \$5 Million per accident for bodily injury and property damage.

SECTION 4. Installation of Communications Network.

4.1 Except as otherwise provided by this License or permitted by the City, all of Licensee's future installations and Communications Network within the City's right-of-way shall be underground and shall meet the standard specifications and reasonable requirements of the City.

4.2 The Licensee's installation of the Communications Network shall be reasonably coordinated with other utilities to accommodate opportunities for common trench installation along with other utility undergrounding. Unless attachment to existing overhead poles is approved by the City Engineer, all installations shall be in conduit or innerduct as reasonably approved by the City Engineer.

4.3 Licensee intends to construct infrastructure for use by telecommunications companies, businesses, entities and/or individuals by providing conduit and fiber optic network capability in City's public Right-of-Way. The Communications Network shall be installed in multiple phases as agreed upon by Licensee and the City before permitting. This project will take place on major arterial and collector streets in City, and it is the intent of the Parties that Licensee and City will work to minimize the inconvenience to the citizens of City and others who use the arterial streets impacted by the project by developing phases of the project to be completed in sequence. The sequencing shall be developed and implemented so as to complete portions of the right-of-way in sequence and to complete each phase of the project before beginning work on the next phase of the project. Licensee will minimize left turn restrictions to one week maximum only if there is no alternative option per location. Additionally, full intersection closures will not be authorized. Licensee will work with the City Engineer to determine construction phasing.

SECTION 5. Operation of the Facilities.

5.1 The authority granted by this License to use the public highway and public rights-of-way does not authorize Licensee's use of the facilities for operating a cable television system, a cable system or authorize the Licensee to operate as a cable operator as those terms are defined in the Communications Act of 1934 as amended, state law, or the City Code. The authority granted by this License does not authorize the use of the public highways and public rights-of-way for open video systems as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the City may require to occupy the highways to provide service other than Communications Network services. The Licensee agrees that if Licensee leases to others the Communications Network facilities for Telecommunications Services or Interstate Telecommunications Services pursuant to and as defined by A.R.S. §§9-581 et seq., Licensee shall condition such upon the lessee applying for and obtaining from the City any required authorization for such use, including, if required, a Telecommunications Services license, an Interstate Telecommunications Services license or any other license that may be required by the City.

5.2 Licensee agrees and will take all reasonable actions to inform the lessee or contracting party that the City requires persons using Licensee's facilities to obtain a telecommunication license if such person constructs, installs, operates or maintains telecommunication facilities within the public highways of the City.

SECTION 6. Licensee Abandonment of the Facilities. Term.

6.1 If the Licensee abandons use of all or any part of its Communications Network under or pursuant to the License, or upon cancellation, revocation or termination of the privilege herein granted, Licensee shall notify the City and may, subject to the City's approval, permanently abandon the improvements in place. In lieu of permanent abandonment, the City may require Licensee to the reasonable satisfaction of the City and, without cost or expense to the City, promptly remove its facilities and restore the public highways and public rights-of-way to a reasonable condition under the supervision of the City. Upon permanent abandonment, if the City does not require removal, the Licensee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such facilities which are not removed as required by the City within one hundred twenty (120) days of either such date of termination or revocation of this License or the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. The Arizona Blue Stake Center must be notified to record facilities abandoned.

6.2 Nothing in Section 6.1 shall be deemed to abandon, or require Licensee to remove facilities that the Licensee uses for the provisions of services other than Telecommunications Services or Interstate Telecommunications Services, so long as such use of facilities for the provisions of the ongoing other services is authorized by Licensor pursuant to any separately issued authorization required by the City.

6.3 The right, privilege and license granted herein shall continue and exist for an initial term of five (5) years from the effective date hereof unless sooner revoked or canceled as provided in Section 9.1 below. So long as Licensee is not in default hereunder, this License shall automatically renew for one (1) additional term of five (5) years, unless Licensee gives City written notice of its intention not to renew no less than sixty (60) days prior to the expiration of the then current five (5) year term.

SECTION 7. Transferability of License.

7.1 The right, privileges and License granted hereunder shall not be assigned or otherwise transferred without the expressed written consent of the City by an ordinance or resolution passed by the City Council, which consent shall be exercised in the City's sole and absolute discretion. The new Licensee as approved by the City shall be equally subject to all the obligations and privileges of the original License including any amendments, which will remain in full effect, as if the new Licensee was the original Licensee.

7.2 The License shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Licensee, either by act of the Licensee or operation of law, without the consent of the City. Prior to any proposed assignment becoming final, the Licensee shall seek the consent of the City to such proposed assignment.

7.3 The approval of any change shall include an Assignment Agreement form to be signed by Assignee, Assignor and the City. The Licensee shall provide City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer or lease of

the License, certified and sworn to as correct by the Licensee. The Licensee shall notify the City within sixty (60) days of any change in mailing address.

7.4 The assignment of License, including any amendments, shall be binding on the Assignee of the License as if Assignee had originally executed the License for the full term of the License.

7.5 Nothing in this Section shall be deemed to prohibit a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a Lender or creditor in the ordinary course of business. In the event a Lender assumes control of the assets and operation of the Licensee through a default of the Licensee in loan obligations, the Lender may assume the rights and obligations of the Licensee. The Lender may not transfer or change control of the License without submitting the change to the City for approval. If the Lender does continue operation on any basis at any time, he shall be subject to all provisions of the License. No later than three (3) years after assumption of control by the Lender, the Lender shall apply to the City for the right to continue assumption of control by the Lender or to transfer the License. Application by the Lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and shall not be unreasonably denied or upheld. A "Lender" as discussed herein shall not include a company, person or corporation or other entities who operate cable television systems or Fiber Optics Telecommunications systems as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the License without City Council review and approval.

7.6 Notwithstanding the foregoing, prior consent shall not be required for transfer to any company which is owned or controlled or under common control and with the same direct parent as Licensee, and which is intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent, provided that no such transfer shall be valid unless Licensee and the proposed transferee submit a binding agreement and warranty to the City stating that:

- A. The proposed transferee has read, accepts and agrees to be bound by the License;
- B. The proposed transferee assumes all obligations, liabilities and responsibilities under the License for the acts and omissions of Licensee, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which Licensee could not have exercised; and
- C. The transfer will not substantially diminish the financial resources available to the Licensee.

7.7 Prior to completing such transfer described in Subsection 7.6, Licensee and the proposed transferee shall submit to the City a description of the nature of the transfer, and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License.

SECTION 8. Nonexclusive License.

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

SECTION 9. Revocation of License.

9.1 The License granted hereunder may be revoked prior to its date of expiration by the Licensor if any one of the following events occurs:

- A. The Licensee fails to comply with the material terms and conditions of the License or applicable law and does not remedy or cure such failure to comply within sixty (60) days after its receipt of written notice thereof from City;
- B. The Licensee is or becomes insolvent or is a party to a voluntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of Licensee as a going concern, or if there is any similar action that affects Contractor's capability to perform its obligations under this License; and
- C. The Licensee is the subject of a petition for involuntary bankruptcy not dismissed within sixty (60) days.

SECTION 10. Acceptance of License Terms and Conditions.

10.1 This License shall not become effective until executed by the City and Licensee. By accepting this License, the Licensee covenants and agrees to perform and be bound by each and all terms and conditions imposed by the License and Code of the City.

10.2 The Licensee acknowledges and accepts the right of the City to issue a License and Licensee agrees it shall not now or at any time hereafter challenge this right to issue the License in any way or in any City, State or Federal Court.

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

10.4 In the event of conflict between the terms and conditions of the License and the terms and conditions on which the City can grant a license or permission to use the streets and public ways as set forth in applicable federal law, Arizona law, City Code, the applicable federal law, Arizona law, City Code shall, without exception, control.

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

10.6 The Licensee shall have no recourse whatsoever against the City or its officials boards, commissions, agents or employees for any loss, costs, expense, or damage arising out of any provision or requirement of the Licensor because of the enforcement of the License or because of defects in ordinance or License issuance.

10.7 If Licensee enters into any agreement for use of public property with another similarly situated municipality in Arizona that grants to the other municipality rights or financial benefits that are more beneficial to such municipality than what is provided by this License Agreement, the City shall have the right to amend this License Agreement to reflect the same or substantially similar terms of such other agreement.

SECTION 11. Records.

11.1 The City may inspect all of Licensee's books and records directly related to Licensee's compliance with the requirements of this License at Licensee's offices at any time during regular business hours upon five (5) business days' prior written notice, so long as such inspection is conducted in such a way as to minimize any disruption to Licensee's business operations.

SECTION 12. Partial Invalidity.

12.1 If any section, paragraph, subdivision, clause, phrase or provision of this License shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this License as a whole or any part of the provisions of this License other than the part adjudged to be invalid or unconstitutional.

SECTION 13. Condemnation by City.

13.1 The City reserves the right to acquire all of the Communications Network of Licensee used in the conduct of this License by the exercise of the right of eminent domain in accordance with the conditions set forth in the Arizona Revised Statutes.

SECTION 14. Notices.

14.1 All notices, requests, demands, claims and other communications permitted or required to be given pursuant to this License must be in writing and shall be deemed duly given and received (i) if personally delivered, when so delivered; (ii) if mailed, three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below; (iii) if sent by electronic facsimile, once transmitted to the fax number specified below and the appropriate telephonic confirmation is received, provided that a copy of such notice, request, demand, claim or other communication is promptly thereafter sent in accordance with the provisions of clause (ii) or (iv) hereof; or, (iv) if sent through an overnight delivery service in circumstances to which such service guarantees next day delivery,

the day following being so sent: All such notices permitted or required to be delivered hereunder shall be addressed as follows:

If to the City:
City of Maricopa
City Engineer
39700 W Civic Center Plaza
Maricopa, AZ 85138

With a copy to:

Fitzgibbons Law Offices, PLC
Attn: Denis Fitzgibbons
1115 E. Cottonwood Lane, Ste 150
Casa Grande, AZ 85122

If to Licensee:
Fatbeam, LLC
Attn: Legal Department
2065 W. Riverstone Drive, Suite 105
Coeur d'Alene, ID 83814

Either Party may from time to time designate any other address for this purpose by written notice to the other Party in the manner set forth above.

SECTION 15. Recitals.

15.1 The Recitals set forth at the beginning of this License are incorporated by reference into this License as binding contractual terms.

SECTION 16. Entire Agreement and Amendment.

16.1 This License constitutes the entire agreement of the Parties regarding the matters set forth herein and may be amended or modified only by a written instrument signed by an authorized representative of each Party, except that Licensor may modify this License as necessary to comply with applicable laws and regulations. In the event that an amendment in this License is necessary in order for the parties to comply with applicable laws and regulations, each Party must use good faith efforts to amend the License to effect such compliance. This License will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

SECTION 17. Governing Law.

This License will be governed by, enforced and construed in accordance with the laws of the State of Arizona, and any Party bringing a claim hereunder may bring such claim only in the Superior Court of Pinal County, Arizona. The Parties hereby irrevocably designate this court as the only court of proper jurisdiction and venue for any actions or proceedings relating to this Agreement and waive any objections or defenses relating to jurisdiction with respect to such action or proceeding. Each Party consents to service of process under the statutes and rules applicable to the Superior Court of Pinal County, Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this License Agreement shall be Pinal County, Arizona. Notice is hereby given of the applicability of A.R.S. § 38-511.

SECTION 18. Attorneys' Fees.

18.1 The prevailing party in any litigation arising out of this License shall be entitled to the recovery of its reasonable attorneys' fees, court costs and other litigation related costs and fees from the other party.

SECTION 19. Liability Limitation.

19.1 The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operation of Licensee's Communications System or the provision of services, or for any damages arising out of a Licensee's use of the public rights-of-way.

SECTION 20. No Waiver.

20.1 No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this License shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

SECTION 21. No Third Party Beneficiaries.

21.1 This License is intended to be for the sole benefit of City and Licensee and there shall be no third-party beneficiaries of this License or any provisions hereof. Nothing in this License shall confer on any person or entity, other than City and Licensee, any rights, benefits or remedies under or by reason of this License.

SECTION 22. Remedies Not Exclusive.

22.1 The remedies set forth in this License are not exclusive. Election of one remedy shall not preclude the use of other remedies.

SECTION 23. Survival.

23.1 The rights and obligations of the Parties under Sections 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22 and this Section 23, and any other obligations which reasonably should survive expiration or other termination or completion of this License shall remain in full force for a period of three (3) years following any such termination, expiration or completion except that if an action is brought by any Party prior to the expiration of three (3) years following any termination, expiration or completion of this License, the provisions of this License that are the subject of such action shall survive until any settlement, judgment or order resulting from such action is fully satisfied.

This License executed this _____ day of _____, 2020 (The "License Date").

CITY OF MARICOPA,
a municipal corporation

By: _____
Its Ricky Horst, City Manager

Attest:

Approved as to form:

By: _____
Vanessa Bueras, CMC
City Clerk

By: _____
Denis M. Fitzgibbons
City Attorney

FATBEAM, LLC,
a Washington limited liability company

By: Tony Perkins
Its Tony Perkins COO

Exhibit A
Licensee's Communications Network

Exhibit B
City Network

Exhibit B-1
Specifications for City Network

