

**REVOCABLE FIBER OPTIC COMMUNICATIONS SYSTEMS LICENSE**

**ISSUED TO**

**BICENTEL, LLC**

**BY THE CITY OF PEORIA, ARIZONA**

THIS REVOCABLE FIBER OPTIC COMMUNICATIONS SYSTEMS LICENSE ("License") is issued by the CITY OF PEORIA, ARIZONA an Arizona municipal corporation (hereinafter called "City") to BICENTEL, LLC (hereinafter called "Licensee"), a Florida limited liability company authorized to do business in Arizona.

WHEREAS, the City owns certain public streets and rights-of-way ("ROW") within the boundaries of the City; and

WHEREAS, Licensee has represented to and/or provided documents to the City which establish that it has not received a Certificate of Convenience and Necessity, nor is Licensee authorized to construct, operate and maintain facilities in the City of Peoria to furnish Telecommunication Services, as defined in A.R.S. §9-581, to the public; and

WHEREAS, Licensee has applied to the City for permission to construct, install, operate, repair, and maintain a network of fiber optic cables and all related parts and property including, without limitation, conduit, carrier pipe, cable fibers, repeaters, power sources, and all other attachments and appurtenances ("Facilities") designed for or used to provide Fiber Optic Communications Services (the "Services"), as defined in Section 23-108 of the Peoria City Code, which are excluded from the definition of Telecommunications or Telecommunication Services, as defined by A.R.S. §9-581, Wireless Services as defined in §9-591, Cable Services as defined in the Peoria City Code, or Video Services as defined in A.R.S. §9-1401; and

WHEREAS, Licensee has represented, attested to, and provided documentation to the City establishing that the Facilities and Services are not Telecommunications or Telecommunication Services, as defined by A.R.S. §9-581, Wireless Services or Wireless Facility as defined in §9-591, Cable System or Cable Services as defined in the Peoria City Code, nor a Video Service Network or Video Services as defined in A.R.S. §9-1401; and

WHEREAS, Licensee acknowledges and agrees that by way of this License it will provide Fiber Optic Communications Services and no other services within the City's ROW; and

WHEREAS, Licensee desires the ability to construct, install, operate, repair, and maintain Facilities within the ROW for the purpose of providing the Services to authorized areas ("Use Areas"), identified on the map, attached, and incorporated as Exhibit "A", subject to and in accordance with the terms and requirements of this License; and

WHEREAS, the City desires to grant Licensee a License to construct, install, operate, repair, and maintain Facilities in Use Areas identified in Exhibit "A" for the purpose of providing the Services; and

WHEREAS, the Parties acknowledge that the Licensee's Use Area contains eight (8) subdivisions within its boundaries and/or along its fiber and conduit route; and

WHEREAS, the City is authorized to regulate its streets, and ROW, and to grant, renew, deny, amend, and terminate licenses and otherwise regulate the installation, operation, and maintenance of such Facilities within the City's boundaries pursuant to the Peoria Charter, Peoria City Code, other applicable laws, the City's police power, its authority over the public highways, public streets, and public ROW, and its other governmental powers and authority; and

WHEREAS, pursuant to the Peoria City Code, and City Council approval the City Council has authorized the City Manager or his designee to execute a license with Licensee to construct, install, operate, repair, and maintain Facilities in, along, under, over and across public highways, public streets, and public ROW within the City to provide the Services; and

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

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the City hereby grants a License to Licensee expressing permission to use the City's public highways, public streets, and public ROW subject to the terms and conditions set forth herein.

<u>1. Exhibits</u>	<u>Description</u>
Exhibit "A"	Use Areas

The use areas in Exhibit "A" may be amended administratively upon written request of Licensee subject to the approval and discretion of the Development and Engineering Department Director. Licensee shall pay the City Development and Engineering Department an amount equal to the actual direct administrative costs incurred by the City as such costs are determined by the Development and Engineering Department Director for the City processing the amendment to Exhibit "A", which said amount shall be due within thirty (30) days of receipt of the City's invoice for such costs. Any amendments to Use Areas will not become effective until Licensee's request and the Engineering Department Director's approval has been filed with the City Clerk.

2. Permission Granted.

2.1 Subject to the provisions contained herein, the Peoria City Code, City Charter, Arizona State Statutes, and the Constitution of the State of Arizona, the City hereby grants to Licensee the nonexclusive temporary, revocable license, permission, right

and privilege to construct, install, operate, repair, and maintain Facilities in, under, along, over, and across the City's public highways, public streets, and public ROW to provide the Services, as set forth in Section 11.4, within the current and future corporate limits of the City. The terms, phrases, words, and their derivatives shall have the meaning defined in Chapter 23 of the Peoria City Code as amended from time to time, unless otherwise defined. The permission granted herein to Licensee shall hereinafter be referred to as "License." By accepting this License, Licensee agrees that this License and the Licensee are subject to all provisions of this License, the Peoria City Charter, and Peoria City Code, including without limitation, Chapter 23 of the Peoria City Code, the Peoria Engineering Standards Manual, and Peoria Uniform Standard Details Supplement. Licensee will follow good practices for the industry and perform all work on the Facilities in compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the CITY supplements to MAG, the Peoria Engineering Standards Manual, Peoria Uniform Standard Details Supplement, Occupational Safety and Health Administration ("OSHA") regulations, Manual on Uniform Traffic Control Devices (MUTCD), and Phoenix Barricade Manual as all of which may be amended from time to time .

- 2.2 Upon submittal of an application for this License, and prior to submittal of the License to the City Council, Licensee shall pay City an Application fee in the amount required by the Peoria City Code for the administrative costs of processing this Application, receipt of which is hereby acknowledged. This fee is in addition to any other fee required by this License or the Peoria City Code.
- 2.3 Should the Development and Engineering Department Director, in his/her sole discretion, determine that the complexity of the associated license application, and this License, requires the City to retain outside experts to assist in the review of the material, City shall notify Licensee of the costs before any outside expert costs are incurred, and if Licensee agrees to proceed with its application then Licensee shall pay all reasonably related costs incurred by the City related to such expert assistance.
- 2.4 If it is necessary for the Licensee to comply with any rule or regulation of the Federal Communications Commission ("FCC") or the Arizona Corporation Commission ("ACC") in order to engage in business activities associated with use of the public highways, public streets, and public ROW to provide the Services, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License and shall provide proof of such compliance upon the City's request. Provided, however, no such rule or regulation of the FCC or ACC shall enlarge, reduce, alter, undermine, or modify any of the rights, obligations, or duties required by this License without a prior written modification to this License, except to the extent permitted by applicable law.
- 2.5 Prior to beginning any and all construction, operation, installation, maintenance or use of the Facilities pursuant to the rights granted under this License for each individual job, Licensee shall apply for and obtain any necessary permits to work in the public highways, public streets, or public ROW. Before beginning such work

Licensee shall notify the City in writing and shall be the party to apply for, be responsible for, and receive any necessary permits to construct, install, maintain, or perform any work in the public highways, public streets, or public ROW, which require a construction permit from the City pursuant to applicable Peoria Engineering Standards, Peoria City Codes, this License, or any other regulation, directive, or order. For each job, prior to beginning any and all construction work performed pursuant to the rights granted under this License, Licensee shall submit required construction assurances (including without limitation permit bonds in the amount of the cost of the improvements) and certificates of insurance for each permit. NOTE - The permit bonds described in this Section 2.5 are separate and distinct from the Performance Bond (Section 6) and Security Fund (Section 7) required elsewhere in this License. Prior to beginning any and all construction work or operating, installing, maintain, or using the Facilities within ROW or property owned by private owners, a homeowners association, Arizona Public Service Corporation ("APS"), or Salt River Project ("SRP"), Licensee must obtain permission from the respective owner, provide the City a copy of the document granting said permission, and apply for and obtain all required City permits, construction assurances, and certificates of insurance as required by this License including without limitation, Section 2.5, Section 6, and Section 7.

- 2.5.1 Individual revocable ROW work permits require submittal of an application together with the required complete construction plans (i.e., drawing, details, maps, notes, etc.). Upon City receipt of the application and plans, the City will perform a technical plan review. Upon completion of the technical review, the City will either issue a permit to the applicant or the application will be returned for completion, corrections, modifications, or submittal of all required information, in which the applicant will be notified and must resubmit the application after the required changes have been made.
- 2.5.2 Plan review fees are due and must be paid at the time Licensee submits the application and the required number of plans. The City will not begin reviewing an application until the required fees have been paid in full.
- 2.5.3 Revocable ROW permit fees are due and must be paid at the time the City issues the permits. The City will not finalize the permits until the required fees have been paid in full.
- 2.5.4 All work pursuant to this License must be performed in strict adherence with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the City of Peoria supplements to MAG and the Peoria Engineering Standards Manual, Peoria Uniform Standard Details Supplement, and must follow good practices for the industry.
- 2.5.5 Licensee shall strictly adhere to and perform all work under this License in accordance with the City of Peoria's Engineering Standards, Chapter 12 Public Utilities – Non-City Utilities, as well as the City's

microtrenching standards, as amended from time to time by the Development and Engineering Department Director; failure to do so will result in a material breach of this License.

- 2.5.6 Licensee understands and agrees that failure to comply with any provision, deadline, or performance requirement in this License, the Peoria City Code, or the Peoria Engineering Standards will result in damage to the City. It is, and will be, impracticable to determine the actual amount of such damage; therefore, Parties agree that any such failure by Licensee will be considered a material breach of this License and result in immediate revocation and termination of the License.
  - 2.5.7 Licensee must properly and fully restore the public highways, public streets, and public ROW or other work area to the condition it existed prior to Licensee beginning work and to correct any violations of specifications, City Code, or any other relevant standard. If Licensee fails to fully restore the public highways, public streets, and public ROW or other work area within thirty (30) calendar days of Notice by the City, or if such corrections cannot reasonably be completed in thirty (30) calendar days, such longer period of time as determined in the sole discretion of the City's Development and Engineering Department Director to be necessary to complete the required work, such failure by Licensee will be considered a material breach of this License and result in immediate revocation and termination of the License.
  - 2.5.8 Licensee must not change the components of any of the Facilities in a way that increases the burden on the ROW, except upon written approval from the City's Development and Engineering Department Director or designee.
  - 2.5.9 Licensee must not change the location of any component or related facility installed pursuant to this License, from that set forth in the initial permit application(s), except upon written approval from the City's Development and Engineering Department Director or designee.
  - 2.5.10 The exact placement and location of Licensee's Facilities shall be determined by City in its sole discretion. Facilities must be installed outside of the paved street areas whenever such location is reasonably feasible.
  - 2.5.11 When Facilities intersect City streets or are to be placed under areas paved with concrete, asphalt, or other permanent paving material, Licensee must use directional boring under such pavement unless the City has approved of other methods in writing.
- 2.6 Notwithstanding anything in this License to the contrary, the City specifically reserves to itself and excludes from this License an exclusive delegable right (the "Reserved Right") over any Use Areas for all manner of real and personal improvements, including without limitation, streets, sidewalks, trails, landscaping, utilities, and every other land use of every description now known and unknown,

and including without limitation allowing other Competing Users to conduct Competing Activities upon any area of the Use Areas or anywhere.

- 2.6.1 Without limitation, Licensee acknowledges and accepts that the City and/or others ("Competing Users") may now or in the future use the Use Areas in a manner inconsistent with Licensee's use. The Competing Users include without limitation the City, the State of Arizona, any political subdivision, the public, all manner of public utility companies, and any other existing or future users of the Use Areas.
- 2.6.2 The City and its agents, contractors, or employees shall not be liable to Licensee, its customers, or any third parties for any service disruption or for any other harm caused to them or to the Facilities due to the actions, omissions, or activities of any other Competing Users or Competing Activities (defined below).
- 2.6.3 The City may remove, alter, tear out, relocate, or damage all or any portion of the Facilities in the case of fire, disaster, or other emergencies if the City's Development and Engineering Department Director or designee deems in his or her sole discretion, such action reasonably necessary under the circumstances. In such event, the City and its agents, contractors, and employees shall not be liable to Licensee, its customers, or any third parties for any delay or disruption of service or harm so caused by action taken as a result of the emergency. When practical as determined in the sole discretion of the City's Development and Engineering Department Director or designee, the City will 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 Facilities. In any event, the City shall inform Licensee of any such City action that results in damage to the Facility. Licensee work to repair or restore the Facilities may be Relocation Work as set forth in Section 12 below.
- 2.6.4 Licensee accepts and acknowledges that there may now or in the future exist any and all manner of work or improvements upon the Use Areas ("Competing Activities"). Competing Activities include without limitation any and all laying, construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning, or other work (whether above, upon, or below the surface of the Use Areas, whether occasioned by the existing or proposed uses of the ROW, or occasioned by existing or proposed horizontal or vertical construction on adjoining or nearby land), dealing with any or all of the following:
  - 2.6.4.1 All manner, known and unknown of streets, sidewalks, alleys, trails, ways, traffic control devices of every description, and any other transportation facilities or their appurtenances.
  - 2.6.4.2 All manner, known and unknown, of pipes, wires, cables, conduits, sewers, storm drains, pumps, valves, switches, conductors,

connectors, poles, supports, access points, guys of every description, and any other utility facilities or their appurtenances.

2.6.4.3 All manner, known and unknown, of canals, drains, bridges, underpasses, culverts, other encroachments of every description, and any other facilities and their appurtenances.

2.6.4.4 Any other use, known and unknown, of the ROW that the City may permit from time to time.

- 2.7 If in the sole discretion of City's Development and Engineering Department Director or designee, Licensee's Facilities, Services, equipment, improvements, or activities present any hazard or impediment to the public, the City, or any other entity; interfere in any way with the City's ability to safely and conveniently operate the ROW; or interfere in any way with the City's ability to perform its utility, public health, public safety, or public welfare responsibilities, then City will notify Licensee and Licensee must immediately and at Licensee's sole cost and expense: i) remedy the hazard, ii) secure the Use Areas, and iii) otherwise cooperate with the City to remove any such condition. Licensee's work crews must arrive at the relevant Use Area within two (2) hours of any request by the City under this subsection.
- 2.8 This License does not in any way grant consent either express or implied for Licensee to use, interfere with, or otherwise operate within City owned or operated conduit. Any such use or operation must be approved in writing by City's Development and Engineering Department Director or designee.
- 2.9 All fiber optic cables and conduits must be placed underground. This License does not in any way grant Licensee the right, permission, or ability to construct overhead or aboveground facilities of any kind.

### 3. General Conditions.

- 3.1 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 this License to Licensee, then this License shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written Notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and the right of termination. If this License shall be considered a revocable permit as provided herein, the Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided therein.
- 3.2 The City hereby reserves every right and power which is required to be herein reserved or provided by the City Code, state law, any ordinance, and the City Charter, and Licensee, by its acceptance of this License, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established, except those actions or requirements which are unlawful under state or federal law. Neither the granting

of any License nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

- 3.3 The Licensee shall comply with the Insurance Requirements set forth in Section 8 (below) of this License. Provided that the insurance also complies with all the requirements of this License, the Licensee may maintain endorsements or policies, in forms acceptable to the City Attorney, to the extent that Licensee shall construct, operate, install, or use its Facilities in the public highways, public streets, and public ROW.
  - 3.4 Licensee shall procure and maintain for the duration of this License a City of Peoria business license as required by Section 11-52 of the Peoria City Code.
  - 3.5 Licensee must meet with the City or other ROW users as requested by the City to coordinate and plan construction on the ROW and all matters affected by this License.
4. Fees.
- 4.1 Licensee shall pay all lawful compensation and taxes required by the Peoria City Code, including without limitation, upon adoption by the Peoria City Council, an annual License Fee as depicted below, all required application and permit fees, and the applicable fees under the City's Schedule of Fees and Charges, as may be amended from time to time.
  - 4.2 Licensee shall pay a License Fee as follows:
    - 4.2.1 Based on eight (8) subdivisions that are within the Licensee's Use Area, and until such time that Licensee generates revenues from the provision of the Services, the Licensee shall pay an Annual Minimum Fee (the "AMF") of twenty five thousand six hundred dollars (\$25,600.00) quarterly or one hundred two and four hundred dollars (\$102,400.00) annually. Once Licensee begins generating revenues from the provision of the Services, and if said revenues exceed the quarterly AMF, the License Fee shall transition to a License Fee based on a percentage of Gross Revenues as described in Subsections 4.2.2 and 4.2.3. Gross Revenues shall have the same meaning as defined in Section 23-108 of the Peoria City Code. For the purposes of this License, the AMF and the fees described in Subsections 4.2.2 and 4.2.3 shall all be referred to as License Fees.
    - 4.2.2 Beginning at the time Licensee begins earning revenue from the provision of internet access services directly to subscribers as an Internet Service Provider (ISP), and such revenues exceed the quarterly AMF, and continuing thereafter, Licensee shall transition from the AMF to a quarterly or annual payment equal to three percent (3%) of its Gross Revenue.

- 4.2.3 Beginning at the time Licensee begins earning revenue from leasing, contracting, or licensing of fiber optic connections, fiber optic strands, or conduit, within the Fiber Optic Communications System to any party, and said revenues exceed the quarterly AMF, and continuing thereafter, Licensee shall transition from the AMF to a quarterly or annual payment of three percent (3%) of its Gross Revenue.
- 4.2.4 Pursuant to Section 23-114 of the Peoria City Code, Licensee will report annually to the City the amount of Gross Revenue generated from the provision of Services and the identities of any party that Licensee is contracting out the use of its Facilities to (the "Annual Report"). Licensee shall submit the Annual Report and payments of License Fees to the City's Chief Financial Officer and City Engineer at the following addresses:

City of Peoria  
Development and Engineering Department  
Attn: Director  
9875 N. 85<sup>th</sup> Ave.  
Peoria, AZ 8535

City of Peoria Finance Department  
Attn: Chief Financial Officer  
8401 W. Monroe Street  
Peoria, AZ 85345

- 4.2.5 All fees described in this Section 4.2 will increase annually according to the Consumer Price Index (CPI) adjustments, to be applied annually, which will be based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Phoenix area, published by the U.S. Department of Labor, Bureau of Labor Statistics. The increase will be calculated by dividing the most recent calendar year's December CPI-U by the December CPI-U in the year rates last changed. In the event that the change between December CPIs indicates an adjustment of less than one percent (1%), a rate change may not be made for the upcoming year.

4.3 New Residential Subdivisions Incentive. Pursuant to Section 23-114 of the Peoria City Code, should the Licensee coordinate with a developer to install its Facilities within a new residential subdivision prior to completion of the street asphalt layer, all applicable License Fees will be waived until such time that the developer has obtained permits for fifty-one percent (51%) of the Residential Units in that subdivision.

- 4.3.1 If the new residential subdivision is developed in phases, then the annual License Fee shall be assessed when the developer has obtained permits

for fifty-one percent (51%) of the Residential Units in that phase of the new residential subdivision.

- 4.3.2 Determination of what qualifies as a new residential subdivision will be subject to verification and concurrence by the City Engineer in his/her sole discretion.

5. Indemnification and Assumption of Risk.

5.1 In addition to the indemnity requirements set forth in the Peoria City Code, Licensee shall defend, indemnify, and hold harmless City, its Mayor and Councilmembers, officers, agents, employees, boards, and commissions (collectively, including City, "City Indemnitees") from and against all third-party claims, demands, damages, losses and expenses of any nature (including an award of attorneys' fees), sustained by the City Indemnities on account of any suit, judgment, execution, claim or demand whatsoever arising out of or resulting from the acts or omissions of Licensee, its customers, officers, agents, employees, contractors, successors or assigns (collectively, "Licensee and its Agents"), or the performance of work by Licensee, its customers, officers, agents, employees, contractors, successors or assigns pursuant to this License and/or the installation, operation, or maintenance of the Facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License (each, a "Claim"), except to the extent such Claim arises due to the gross negligence or willful misconduct of the City 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 5.1. In the event of any Claim specified in this section, the City Indemnitees shall give reasonable, prompt Notice to Licensee of such Claim. Failure of the City Indemnitees to timely give such Notice to Licensee shall relieve Licensee of its indemnity obligations hereunder only to the extent Licensee is actually prejudiced or damaged by such failure. Licensee shall have reasonable control of the defense of any action or litigation of a Claim 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 City Indemnitees' consent, which consent shall not be unreasonably withheld or delayed. The City Indemnitees shall cooperate with Licensee in the defense and settlement of any Claim at Licensee's expense. No City Indemnitee shall take any action to settle, 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. This Section 5.1 will survive the termination or expiration of this License.

5.2 For avoidance of doubt, Licensee's customers shall be considered third parties for purposes of Section 5.1, and Licensee shall indemnify, defend, and hold harmless City Indemnitees against any suit, judgment, execution, claim, or demand whatsoever from its customers, so long as it is alleged to arise or result from the installation, operation, maintenance, repair, or condition of any Facilities authorized

under this License, the delivery of the Services, or the condition of public or private property altered as a result of Licensee's activities.

5.3 Notwithstanding any other provision of, or limitation in, this License to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this License violates any provision of state law or the Constitution of Arizona and City and Licensee are not able (after good faith attempts) to modify the License so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. §41-194.01(B)(1), this License shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination, the Parties shall have no further obligations under this License except those sections that explicitly state they will survive termination. Additionally, if the Attorney General determines that this License may violate a provision of state law or the Constitution of Arizona under A.R.S. §41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. §41-194.01(B)(2), City shall be entitled to immediately terminate this License, except if Licensee posts such bond; and provided further, that if the Arizona Supreme Court determines that this License violates any provision of state law or the Constitution of Arizona, City may immediately terminate this License and the Parties shall have no further rights, interests, or obligations under this License, or claim against the other Party for a breach or default under this License.

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

#### 6. Performance Bond Requirements.

Before the City will issue any permit to construct, install, maintain, or perform any work on public property that requires a permit, Licensee must cause to be filed and must maintain, until either completion of the construction or termination of this License, a faithful performance bond in favor of City in the amount of **\$380,000** or the sum of the construction costs as determined in the sole reasonable discretion of the City Engineer (whichever is greater) to guarantee that Licensee shall 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 City for any damages it may suffer because of such breach. Said bond shall be acknowledged by Licensee, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and Licensee agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the Security Fund. This bond is in addition to any other bond or security requirement described in this License or required by any law or regulation.

#### 7. Security Fund.

- 7.1 Upon application for continued use of the ROW, but no later than five (5) business days before this License is submitted to the City Council for approval, Licensee shall provide either a cash deposit, a domestic irrevocable Letter of Credit to the City, interest bearing account, or a bond, in a form acceptable to the City Attorney, in the initial amount of **\$100,000** or the sum of the construction costs as determined in the sole reasonable discretion of the City Engineer (whichever is greater) as a Security Fund (the "Security Fund"). Said cash deposit, domestic irrevocable Letter of Credit, interest bearing account, or bond, shall be maintained by the Licensee with the City for the term of this License as security for the faithful payment by Licensee and to ensure Licensee's compliance with all lawful orders, permits, and directions of any department or office of the City having jurisdiction over its acts or defaults under this License and any permit issued pursuant thereto, and the payments by Licensee of any fees, claims, liens, or taxes due the City which arise by reason of the construction, operation, or maintenance of the Facilities. This Security Fund is in addition to any other bond or security requirement described in this agreement or required by any law or regulation. The City will notify the Licensee, in writing of any failure, noncompliance, or nonpayment pursuant to this Section 7.1. Should any noncompliance or nonpayment that remain uncured for greater than thirty (30) days (after receipt of written Notice), the City shall have full and complete discretion and authority to withdrawal funds from the Security Fund account, except that all interest accrued on any cash deposit shall be payable to Licensee.
- 7.2 Within thirty (30) days after Notice to Licensee that an amount has been withdrawn by the City from the Security Fund, the Licensee shall deposit a sum of money sufficient to restore such Security Fund to the original amount. Such Notice by the City will include a full accounting of all sums withdrawn.
- 7.3 The Licensee shall be entitled to the return of such Security Fund, or remaining balance 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 no outstanding failure, noncompliance, or nonpayment on the part of the Licensee. Any funds that the City erroneously or wrongfully withdraws will be returned to Licensee, within thirty (30) business days of such a determination in the sole discretion of the City Manager or designee.
- 7.4 The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City whether reserved by this License or authorized by law; and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right the City may have.
- 7.5 The Licensee shall provide the City, in a form acceptable to the City Attorney, an endorsement or amendment to such security providing that such security can be withdrawn by City pursuant to the provisions of this License and that, if withdrawn, such security shall be restored to the original amount as provided in this License.
8. Insurance Requirements.
- 8.1 Licensee, at its own expense, shall carry and maintain insurance of the types and amounts required in this Section with companies possessing a current AM Best, Inc.

rating of A++ or better and legally authorized to do business in the State of Arizona with policies and forms reasonably satisfactory to City.

- 8.2 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 License and may result in termination of this License.
- 8.3 The failure to renew any of the insurance policies required pursuant to this License prior to their expiration shall constitute a breach of this License.
- 8.4 All insurance policies, except Workers' Compensation, required by this License 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.
- 8.5 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. The insurance provided by Licensee shall not require contribution from, any other insurance or self-insurance maintained by the City or the City's agents, representatives, officials, officers, directors or employees.
- 8.6 The insurance policies 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.
- 8.7 The insurance policies may provide coverage requiring deductibles, but payment of such deductibles shall be assumed by and shall be the sole responsibility of the Licensee.
- 8.8 Licensee will provide City with notice of cancellation of any policy required above in accordance with policy provisions.
- 8.9 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 the Security Fund.

**8.10 Proof of Insurance; Certificates of Insurance.**

8.10.1 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 Management Division approval of such Certificates of Insurance.

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

8.10.3 All Certificates of Insurance shall identify the policies in effect on behalf of 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 the License documents. 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.

8.10.4 City reserves the right to request and to review at a mutually agreeable location, within ten (10) working days, copies of any or all of the required insurance policies and/or endorsements herein. 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.

8.11 Required Coverage.

8.11.1 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 sub-consultant 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 CG 00011207 or equivalent thereof including, but not limited to, severability of interest and waiver of subrogation clauses.

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

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

8.11.4 Claims involving contractual liability insurance applicable to the Licensee's obligations of indemnification.

8.12 Commercial General Liability; Minimum Coverage Limits.

8.12.1 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 as broad as the Insurance Services, Inc.'s (ISC) Additional Insured, Form B, CG 2010, or equivalent, and shall include coverage for Licensee's operations and products, and completed operations.

8.13 Worker's Compensation and Employer's Liability.

8.13.1 Licensee shall maintain Worker's 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 \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy

limit. In case any work is subcontracted, Licensee's will require the subcontractor to provide worker's compensation and Employer's Liability to at least the same extent as required by Licensee.

8.14 Automobile Liability.

8.14.1 Licensee shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 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 I, "any auto" (Insurance Service Office, Inc. Policy Form CA 0011293, or equivalent).

9. Coordination.

The City may issue reasonable, nondiscriminatory policy guidelines to all utility services, licensees, and permittees to establish procedures for issuing engineering permits to multiple licensees located within the same one-mile segments. Licensee agrees to cooperate with the City in establishing such policies and comply with the procedures established by the Development and Engineering Department Director or designee and to coordinate with the City in the event of the issuance of multiple engineering permits in the same one-mile segment.

Whenever applying for a permit pursuant to this License, Licensee must coordinate with other utilities as determined by the City to accommodate opportunities for colocation and common installation. Nothing herein shall require Licensee to incur any unreasonable additional expense in order to accommodate colocation or common installations.

All installations must be contained within conduit inner duct, or other material approved by the Development and Engineering Department Director.

10. Records and Locator Service of Facilities; Mapping.

10.1 Licensee shall maintain as-built drawings of all of its Facilities located within the Public Highway or ROW and shall furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified by the City) and in hard copy upon reasonable request by the City. Licensee must create and maintain maps and records showing precise and verifiable horizontal and vertical location information for all of its Facilities, routes, new routes, and all above ground equipment located in the Public Highway or ROW and must make this information available to the City. Licensee must supply GIS data attributes in a schema provided by the City, with an accuracy of no less than three (3) feet for all components of the Facilities. Licensee must also provide surface-location markings of all of Licensee's Facilities that are located underground within any public highways, public streets, and public ROW within ten (10) business days of installation. The information provided by Licensee under this Section 10.1 must be accurate to the best of Licensee's knowledge. Licensee must make every reasonable effort to provide accurate and useful information, and the City acknowledges that the information will be provided on an "as-is" and "as-available" basis. Licensee may remove any information from

the drawings provided hereunder that is not required for the City's purposes or that is confidential.

- 10.2 If Licensee provides records described in this Section 10 in a format that is not compatible with the City, Licensee must pay within thirty (30) days of Notice by the City, the actual, reasonable conversion costs, the City incurs to update the City's electronic mapping service to accommodate Licensee's records. If City has not received Licensee's payment for such costs within thirty (30) days, the City may deduct the amount from the Security Fund.
- 10.3 The files and drawings provided by Licensee to the City shall be considered Proprietary Information (defined below) subject to the provisions of Section 11.8.
11. Installation and Operation of the Facilities. All installations shall meet the applicable standard specifications and requirements of the City.
  - 11.1 The City has found that pavement cuts cause early deterioration of the streets and as such has imposed a surcharge fee to cover damages and early deterioration. Therefore, pursuant to § 23-54 of the Peoria City Code Licensee shall be responsible for the cost of all pavement cuts during the installation and maintenance of their Facilities and throughout the term of this License.
  - 11.2 Any trimming of trees by the Licensee in the public highways, public streets, and public rights-of-way shall be subject to such regulation as the City Engineer or other authorized City official may establish to protect the public health, safety and convenience.
  - 11.3 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 Licensee's membership shall be submitted to the City upon request.
- 11.4 Services: Contracting use of Facilities to Users.
  - 11.4.1 Licensee may provide Services by occupying the City's ROW with lit fiber optic strands within conduit or fiber optic strands that are not connected to transmission equipment ("Dark Fiber"), or conduit, that Licensee may lease, license or contract to third parties (each a "User") for the purposes of the Users providing services through the Facilities. Users that lease, license or contract use of the Facilities to provide Telecommunications and Telecommunication Services, as defined by A.R.S. §9-581, Wireless Services as defined in §9-591, Cable Services as defined in the Peoria City Code, Video Services as defined in A.R.S. §9-1401, or Fiber Optic Communications as defined in the Peoria City Code, must obtain the appropriate license and/or franchise from the City.
  - 11.4.2 Licensee agrees that if Licensee leases, licenses or contracts its Facilities to any Users for any other use, then Licensee shall condition the effectiveness of such upon the User applying for and obtaining from the

City any required authorization for such use, including, if required, a Telecommunications Services, Fiber Optic Communications, Wireless Services, Cable or Video Services license or franchise, or any other license or franchise that the City may require. Additionally, should Licensee's User self-perform any work on the Facilities within the Public Highways, then Licensee shall require that such User provide an indemnification of the City to the same extent required of Licensee in this License.

11.4.3 Should Licensee lease, license or contract the use of its Facilities to a User within the ROW, Licensee shall inform the City within thirty (30) business days of Licensee delivering the lit fiber, Dark Fiber or conduit to a User, Licensee shall report the location and length of the lit fiber, Dark Fiber, or conduit route that is being leased, license or contracted to the User. At any time on request by the City, Licensee shall disclose to the City, within thirty (30) business days, all Users with whom it leases, licenses or contracts the use its Facilities in the public highways, public streets, and public ROW within the City. Information provided to the City pursuant to this Section will be kept confidential to the extent allowed by law. If there is a public records request for such information, City will contact Licensee to allow it an opportunity to seek judicial relief.

11.5 Third Party Contracts. Subject to Section 11.4 of this License, Licensee may enter into written contracts with Users for the provision of Services within the portions of the ROW subject to this License, provided that Licensee at all times retains exclusive control over and responsibility for its Facilities and remains responsible for locating, servicing, repairing, maintaining, replacing, relocating, or removing the Facilities pursuant to the provisions of this License. Such contracts ("User Contracts") shall be subject to all requirements and provisions of this License and the following:

11.5.1 User Contract Required. Licensee must ensure that no User transmits any type of data over the Facilities or otherwise use the Facilities except in accordance with a written User Contract with Licensee. Pursuant to Section 11.4 of this License, the Licensee must provide the identity of such Users to the City upon request, but such information will be considered Proprietary Information as described in this License.

11.5.2 User Work in ROW. Licensee must ensure that no User performs any construction, maintenance, repair, or other work of any kind in the ROW related to the Facility unless: (a) the User Contract provides for the User to construct, install, operate, or maintain any portion of the Facilities within the route in the ROW; (b) the User has entered into a License with the City for use of the City's ROW and (c) the User posts required bonds, security funds, insurance, and acquires all necessary permits from the City.

11.5.3 Responsible for Third Party Users. Licensee must cause all persons using the ROW through or under Licensee or this License to comply with this

License. Licensee is responsible for any and all acts of Users, including without limitation violations of this License. Licensee shall be fully responsible for any and all acts or omissions of Users. Licensee must ensure that all Users comply with the terms and conditions of this License. Any act or omission by a User that would constitute a breach of this License if committed by Licensee shall be deemed a breach by Licensee. Licensee will indemnify, defend, and hold harmless Licensor from and against any and all claims, liabilities, damages, losses, or expenses arising from or related to the acts or omissions of, or the use of the ROW by, any Users in accordance with Section 5.1 of this License such obligation will survive the termination or expiration of this License.

- 11.6 If Licensee damages, disturbs, or alters the surface or subsurface of any Public Highway or adjoining public property, any public improvement, landscaping, or property of third- parties, then Licensee shall promptly, at its own expense, and in a manner reasonably acceptable to the City, repair and restore the damage or disturbance to a condition substantially comparable to its prior state. In the event Licensee is unaware of the damage or unaware that the repair is unacceptable to the City, the City shall give Licensee notice and allow the Licensee the opportunity to repair. If Licensee fails to complete such repair within a reasonable time or in a manner reasonably acceptable to the City, then the City may perform such repair and Licensee shall pay all the actual, reasonable, and fully documented direct costs expended to complete the repair.
- 11.7 The authority granted by this License to use the public highways, public streets, and public ROW does not authorize Licensee's use of the Facilities for Telecommunication Services, as defined by A.R.S. §9-581, Fiber Optic Communications, a Wireless Facility for Wireless Services as defined in §9-591, operating a cable television system, a cable system or authorize the Licensee to operate as a cable operator as those terms are defined in the Communications Act of 1934 as amended, state law, or the City Code. The authority granted by this License does not authorize the use of the public highways, public streets, and public ROW for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the City may require to occupy the highways to provide service other than telecommunications service.
- 11.8 If the City requests any information described in this License, Licensee must provide such documentation within ten (10) days of delivery of written Notice by City. Upon reasonable notice by City, Licensee must make its Facilities available for joint inspection by the City. If Licensee determines that in order to respond to City's request for documentation and inspection that it must provide Proprietary Information, the Licensee shall so designate such claim to proprietary treatment on documents provided to City, and City will consider such documents confidential to the extent allowed by A.R.S. § 39-126.01.

11.9 Notwithstanding any provision in this License, the Licensee acknowledges and understands that City is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 *et seq.*) and Licensee agrees that the City has no liability to Licensee for any disclosure thereunder. Proprietary Information shall mean any document or material clearly marked and identified as confidential or proprietary (hereinafter "Proprietary Information"). Such Proprietary Information may include without limitation, any customer lists, financial information, technical information, or other information clearly identified as confidential or proprietary by Licensee. Proprietary Information disclosed by Licensee to the City or its constituent departments, clearly marked and identified as described above, shall be regarded as proprietary. If the City receives a public records request that seeks the disclosure of Proprietary Information, the City will promptly provide Notice to Licensee so that Licensee may seek legal relief as necessary and appropriate under Arizona law. It will be the Licensee's sole responsibility to defend against disclosure of Proprietary Information at Licensee's sole cost and expense. If Licensee does not respond to such Notice within ten (10) days, the City may disclose the requested Proprietary Information without liability, such disclosure shall not constitute a breach of this Licensee. In the event that the City is required by law as determined in the City's sole discretion, to disclose Proprietary Information including without limitation (a) in response to a valid order by a court or other governmental body; (b) in response to a public records request; (c) as otherwise required by law; or (d) as necessary to establish the rights of either party under this Licensee, such disclosure shall not constitute a breach of this Licensee. If the City is held liable for any damages, including costs and attorneys' fees, arising out of the City's withholding of Proprietary Information, Licensee shall fully and comprehensively indemnify the City for all such damages, including costs and attorneys' fees, such indemnification obligation shall survive the such obligation will survive the termination or expiration of this License. The foregoing shall not apply to any information that is already available to the public. In the event the Proprietary Information is deemed not proprietary, subject to disclosure under any relevant law, or in compliance with a court order, the City will disclose the Proprietary Information as required by A.R.S. § 39-121 *et seq.* such disclosure shall not constitute a breach of this License.

12. Licensee Relocation of Facilities. Pursuant to Chapter 23 of the Peoria City Code, and the terms of this License, upon the City's request, Licensee must temporarily or permanently relocate or otherwise modify any existing and future Facilities ("Relocation Work") as necessary to accommodate any government purpose according to the following terms:

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

12.2 The Relocation Work includes all of the work determined by the City to be necessary to accommodate any Competing Activities, including without limitation to temporarily or permanently, remove, protect, support, disconnect or relocate any portion of the existing or future Facilities.

- 12.3 If any part of the Relocation Work has not been completed by Licensee within Sixty (60) days of the receipt of Notice from the City, the City may elect to complete such work, in which case Licensee must reimburse the City for its actual and reasonable costs associated with such work within thirty (30) days from the receipt of the related invoice from the City. If these such costs are not timely paid by Licensee as described above, City may elect to draw from the Security Fund an amount equal to all costs incurred by the City in connection with the Relocation Work at the City's sole discretion, provided the City shall provide Licensee a full accounting of all sums withdrawn within thirty (30) days of the withdrawal.
- 12.4 City has no obligation to relocate Licensee's Facilities, equipment, materials, or fiber (lit or dark), nor does the City have an obligation to relocate the City's or any other entity's facilities, equipment, materials, or fiber (lit or dark).
- 12.5 Any of Licensee's Facilities that are not relocated as required by this License shall be considered abandoned, and the City shall be entitled to use, relocate, or remove such abandoned Facilities at its sole discretion and at the sole cost and expense of Licensee.
- 12.6 All Relocation Work is subject to and must comply with the provisions of this License, the Peoria City Code, and all other City requirements including without limitation the Peoria Engineering Standards Manual and the Peoria Uniform Standard Details Supplement.
13. Licensee Abandonment of Facilities. If the Licensee abandons use of all or any part of its Facilities ("Abandonment"), or upon cancellation, revocation, or termination of this License, unless another option is approved in writing by the Engineering and Development Department Director, Licensee must remove its Facilities, equipment, and property from the Use Area, and restore all aspects of the Use Area, Public Highways, utility easements and/or ROW to a condition compliant with the City of Peoria Engineering Standards Manual, Peoria Uniform Standard Details Supplement, and all other applicable laws, and regulations and receive approval from the Engineering and Development Department Director that such removal and restoration work is acceptable within one hundred and eighty (180) days of Abandonment, cancellation, revocation, or termination of this License. Upon Abandonment, Licensee may submit to the City a proposal for transferring ownership to the City as an alternative to removal and restoration. Such proposal may be accepted or rejected in the sole Discretion of the Engineering and Development Department Director. If any Facilities are not removed by Licensee from the Use Area within one hundred eighty (180) days of Abandonment, cancellation, revocation, or termination of this License the City may elect in the sole Discretion of the Engineering and Development Department Director to either: i) that the Facilities become the sole property of the City, or ii) the City will cause the removal of the Facilities and restoration of the Use Area and the City may seek compensation for all the City's associated costs from the Licensee or any relevant security interest or bond related to this License.
14. Term of License. The rights, privileges, and obligations in this License shall continue and exist for a period of five (5) years from the Effective Date hereof unless sooner revoked, cancelled, or terminated as provided in this License. No provision of this

License shall be construed to grant any automatic extension, renewal, or replacement thereof.

At any time prior to the expiration of this License, the Licensee may apply to the City for a renewal or extension of the License in accordance with the Peoria City Code, policies and procedures. Any such extension must be in writing and will be issued at the sole discretion of the City Manager or designee.

15. Transferability of License.

15.1 No Assignment. The rights, privileges, and license granted hereunder may not be sublet, assigned, or otherwise transferred nor may any of the rights, privileges, or license, herein 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, without the express written consent of the City by way of a "Agreement and Consent to Assignment of Rights, Interests and Benefits" in a form approved by the City. Before any proposed assignment or other transfer becomes final, the Licensee must request and receive the consent of the City to such proposed assignment. Any such assignment or transfer shall be in conformance with the applicable sections of the Peoria City Code. Any transfer or assignment that is to occur shall adhere to the provisions outlined in the Peoria City Code. The new Licensee (if consented to by the City) shall agree and consent to 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.

15.2 Instruments. Within thirty (30) days of an approved transfer, the Licensee shall provide the City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such transfer, certified, and sworn to as correct by the Licensee. A request for consent to transfer shall include an assignment agreement executed by Licensee and transferee in a form acceptable to the City Attorney including without limitation the following provisions:

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

15.2.2 The 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

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

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

16. Reports.

16.1 Within thirty (30) days of receipt of a written request from the City, Licensee shall provide the City with copies of any communications and reports submitted by Licensee to any federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting this License.

16.2 Within thirty (30) days of receipt of a written request from the City, Licensee shall provide City with regular reports in the formats in which they are customarily prepared by Licensee, to establish Licensee's compliance with the various requirements and other provisions of this License. Licensee reserves the right to designate such information as Proprietary Information as described in Section 11.9. City shall have the right to inspect all books, records, maps, and plans related to this License.

17. Inspection and Repair. Licensee must repair all damage to any City property caused by Licensee. In the event the Development and Engineering Department Director determines, in his/her sole discretion, that Licensee failed to meet the standards enumerated in any section of this License, the Peoria City Code, or any relevant engineering or design standards; or failed to properly maintain or repair any work subject to this License, the City will mail Notice including the Development and Engineering Department Director's findings and basis of those findings to the Licensee. Within thirty (30) days of receipt of such notice the Licensee must either: i) remediate all issues to the satisfaction of the Development and Engineering Department Director, or ii) provide a response in writing (supplemented with any supporting evidence) indicating why Licensee does not believe Licensee bears responsible for the noticed issues. If the Parties cannot agree on the cause of the noticed issue and the dispute is not settled through negotiation within ninety (90) days of the receipt of the above Notice, the Parties agree to attempt in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or another dispute resolution procedure. For any work conducted pursuant to this License including but not limited to this Section 17, Licensee must obtain any permits, bonds, certificates of insurances and pay all fees pursuant to City Policy prior to beginning work.

18. On-Call Assistance.

Licensee must have a live representative (with authority to address all issues and emergencies related to this License) available to the City at all times, twenty-four (24) hours per day seven (7) days per week, at the following phone number 1-800-219-1863. Licensee shall ensure a local representative is present in person within twenty-four (24) hours notice if any issues or emergencies require a physical presence by Licensee. If the City is unable to reach a live representative in the case of an emergency at the phone number listed in this Section 18, it is a material breach of this License, and the City may cancel this License in its sole discretion.

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

Licensee Address:

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Attn: Bicentel LLC  
825 Town & Country Ln 12th  
Floor, Houston TX, 77024

With a Copy to:

Attn: Daniel Missrie  
6767 N 7th St Unit 215,  
Phoenix, AZ, 85014

Emergencies:  
Phone: 1 800 480-847-7732  
E-mail: daniel.missrie@c3ntro.com

20. Notices. Notices hereunder (each, a “**Notice**”) must be given in writing delivered to the other Party or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight courier service that confirms delivery. With respect to the Parties, a Notice shall be deemed sufficient when delivered addressed to a Party as follows:

To City:  
Attn: Development and Engineering  
Department Director  
9875 N. 85<sup>th</sup> Ave.  
Peoria, AZ 8535

With a copy to:  
City of Peoria City Attorney’s Office  
8401 W. Monroe Street  
Peoria, AZ 85345

To Licensee:  
Bicentel LLC  
825 Town & Country Ln 12th  
Floor, Houston, TX, 77024

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) Working Days (excluding Friday, Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive.

21. Lenders. Nothing in this Section shall be deemed to prohibit a pledge, hypothecation, 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, the lender assumes the rights and obligations of the Licensee. The lender or creditor may not transfer or change control of the License without submitting the change to the City for written approval under this Section. If the lender does continue operation of the Facilities on any basis at any time, the Lender will be subject to all provisions of the License. No later than ninety (90) days after assumption of control by the lender or creditor, the lender or creditor shall apply to the City for the right to continue assumption of control or to transfer the License. Application by the lender or creditor for approval of such assumption of control or transfer shall be subject to all provisions set forth herein and written approval by the Peoria City Council such approval shall not be unreasonably denied or delayed. A lender or creditor as discussed herein does not include a company, person, corporation, or other entity that operates cable television systems, telecommunications systems, wireless facility, a video service network or any similar endeavor as a principal or important business. This Section 21 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 Peoria City Council review and approval.
22. Permitted Transfer. Notwithstanding the foregoing, prior consent shall not be required for a transfer to a company that meets the following conditions:
- 22.1 After the transfer, the company will be owned or controlled or under common control with the same direct parent of the Licensee, and the company will remain after such transfer under the ownership or control of that parent or an entity under common control or with the same direct parent.
- 22.2 Within thirty (30) days after completing a permitted transfer, Licensee and the proposed transferee must submit to the City a Notice of transfer, including documents meeting the conditions, and a description of the nature of the transfer, including complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License.
- 22.3 Within thirty (30) days after the transfer, the Licensee must provide City a copy of the deed, agreement, mortgage, or lease or other written instrument evidencing such transfer, certified, and sworn to as correct by the Licensee.
- 22.4 Within thirty (30) days after the transfer, the new licensee must agree in writing to comply with and be bound by the provisions of this License as if the new licensee were the original Licensee.
23. Nonexclusive License. This License 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 or lessen the powers and privileges granted to the City under the Constitution and laws of the State of Arizona.
24. Revocation of License.

- 24.1 The City may revoke the License granted hereunder prior to its date of expiration if the Licensee fails to comply with the terms and conditions of the License or any applicable law.
- 24.2 Before revoking the License, the City shall give written notice to Licensee of the defect in performance and allow Licensee sixty (60) days within which to cure the defect in performance. The City and Licensee may mutually agree in writing to a longer period to cure the defect prior to revocation.
- 24.3 The City need not provide a sixty (60) day cure period prior to revocation if the City finds in its sole discretion that the defect in performance is due to an intentional misconduct, a violation of criminal law, an immediate danger to public health and welfare, or a part of a pattern of violations where the Licensee has already had Notice and opportunity to cure.
- 24.4 The City need not provide notice of revocation and may revoke this License if Licensee voluntarily files any petition, or has an involuntary petition filed on its behalf under any chapter or section of the federal bankruptcy code, files an answer admitting insolvency or inability to pay its debts, or if a trustee or receiver is appointed to Licensee.

25. Acceptance of License Terms and Conditions.

- 25.1 This License will not become effective until all the following have occurred:
  - 25.1.1 Each Party has executed this License; and
  - 25.1.2 Written acceptance thereof has been filed with the Peoria City Clerk; and
  - 25.1.3 This License has been approved by the Peoria City Council; and
  - 25.1.4 Licensee has satisfied all Performance Bond, Security Fund and insurance requirements set forth in this License.
  - 25.1.5 Licensee has obtained its Peoria Business License.
- 25.2 By accepting this License, the Licensee covenants and agrees to perform and be bound by each and every term and condition imposed by the License and by all relevant laws including the Peoria City Charter, Peoria City Code, state laws and rules, and all other requirements of the City.
- 25.3 Licensee acknowledges and accepts the right of the City to issue a License under currently applicable law and Licensee agrees it will not now or at any time hereafter challenge this right to issue the License in any way or in any forum.
- 25.4 Licensee has reviewed the City's ability to grant a License and accepts such a License as the City may now be legally able to require.
- 25.5 In the event of conflict between the terms and conditions of this License and the terms and conditions on which the City may grant a license or permission to use the public highways, public streets, and public ROW as set forth in applicable law, the applicable law shall, without exception, control.

25.6 Nothing in this License shall be deemed to waive the requirement of any code, ordinance, policy, or regulation of the City regarding permits or fees to be paid or manner of construction.

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

26. Entire License and Amendment.

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 City may modify this License as necessary to comply with applicable laws and regulations. In the event that an amendment to 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.

27. Authority to Enter into License.

Each Party represents and warrants that the person(s) executing this License on their behalf has full right, power, and authority to execute this License and bind their respective Party hereunder.

28. Cancellation.

This License is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.

29. Governing Law.

This License is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, without regard to its conflicts of law provisions. Any action to resolve any dispute regarding this License shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona

30. Incorporation of Recitals.

The recitals set forth above are incorporated herein by this reference.

31. Counterparts.

This License may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

32. Section Headings.

The section headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this License.

33. Compliance with Laws.

The Parties agree to comply with all applicable laws that affect this License, the Facilities and ROW as are now in effect or as may hereafter be adopted or amended.

34. No Partnership.

This License and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, or similar relationship between the Parties.

35. No Third-Party Beneficiaries.

This License is solely for the benefit of the Parties and does not create, nor shall it be construed to create rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this License.

36. Severability. Upon mutual written agreement of the Parties, if any term, condition, covenant, stipulation, agreement, or provision in this License is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this License.

37. Exhibits.

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

38. Survival of Liability.

All obligations of Licensee hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this License.

39. No Warranty.

Licensee acknowledges and agrees that the City does not warrant the condition or safety of its public highways, public streets, public ROW, public utility easements, or the premises surrounding the same, and Licensee hereby assumes all risk of any damages, injury or loss of any nature whatsoever caused by or in connection with the use of any City public highways, public streets, and public ROW.

[Signatures Appear on Following Pages]

This License executed this \_\_\_ day of \_\_\_\_\_, 2025.

CITY OF PEORIA, ARIZONA, a municipal corporation

By: \_\_\_\_\_  
Henry Darwin, City Manager

ATTEST:

\_\_\_\_\_  
Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Emily Jurmu, City Attorney

**LICENSEE:**

Accepted By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name]

For: \_\_\_\_\_ LLC

Its: \_\_\_\_\_

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

County of \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public

This License executed this 2nd day of December, 2025.

CITY OF PEORIA, ARIZONA, a municipal corporation

By: \_\_\_\_\_  
Henry Darwin, City Manager

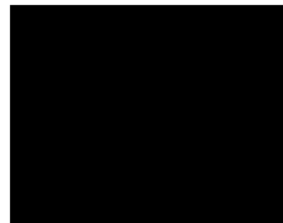
ATTEST:

\_\_\_\_\_  
Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Emily Jurmu, City Attorney

LICENSEE:



Accepted By: Simon Masri  
[Signature]

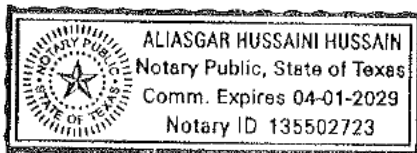
SIMON MASRI  
[Printed Name]

For: Bicentel LLC

Its: LLC

State of Texas )  
County of Harris )

On this 2<sup>nd</sup> day of December, 2025, before me personally appeared Simon Masri, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.



\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**USE AREA MAP**

# City's Jurisdictional boundaries with use area

