

RESOLUTION NO. 1322-24

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PAGE, COCONINO COUNTY, ARIZONA, AUTHORIZING AND APPROVING THE WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF PAGE AND SOUTH CENTRAL COMMUNICATIONS, INC.

WHEREAS, the City of Page ("City") is authorized to regulate its rights-of-way ("ROW") and to enter into agreements relating to the operation and maintenance of private improvements within its public ROW; and

WHEREAS, South Central Communications, Inc., desires to construct, operate and maintain a wired telecommunications network within the City's ROW; and

WHEREAS, the City is willing to grant South Central Communications, Inc., a license to construct, operate and maintain a wired telecommunications network within the City's ROW upon the terms and conditions as set forth in the Wired Telecommunications License and Right-of-Way Use Agreement attached as Exhibit 1, and incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAGE, AS FOLLOWS:

Section 1. That the Wired Telecommunications License and Right-of-Way Use Agreement as attached in Exhibit 1 is hereby approved. The Mayor is hereby authorized to execute the Agreement for and on behalf of the City of Page.

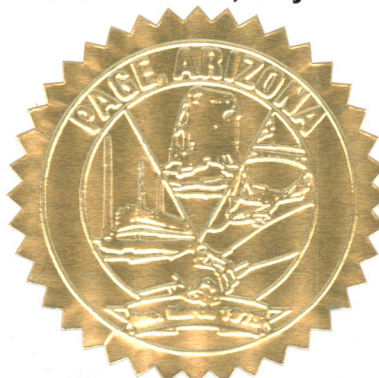
PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAGE, ARIZONA this 7th day of August, 2024, by the following vote:

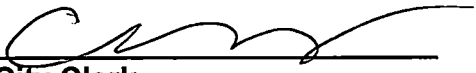
Ayes	<u>6</u>
Nays	<u>0</u>
Abstentions	<u>0</u>
Absent	<u>1</u>

CITY OF PAGE


BY William R. Diak  
William R. Diak, Mayor

ATTEST:



  
\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
City Attorney

**WIRED TELECOMMUNICATIONS LICENSE AND  
RIGHT-OF-WAY USE AGREEMENT  
BETWEEN THE CITY OF PAGE  
AND SOUTH CENTRAL  
COMMUNICATIONS, INC.**

This Wired Telecommunications License and Right-of-Way Use Agreement (this “Agreement”) is effective as of January 1, 2024 (the “Effective Date”), by and between the City of Page, an Arizona municipal corporation (the “City”), and South Central Communications, Inc., a Utah corporation (“SCC”).

RECITALS

A. SCC is a Utah corporation duly qualified to do business as a foreign corporation in Arizona. SCC is a broadband telecommunications provider.

B. SCC desires the ability to be able to install its Facilities (defined below) within the City’s rights-of-way and/or operate, maintain and repair such Facilities within a portion of the City’s rights-of-way, subject to the requirements of this Agreement.

C. SCC seeks an agreement to occupy the rights-of-way with its Facilities and use the rights-of-way for non-Telecommunication Services such as dark fiber leasing.

D. SCC also desires to obtain from the City a Telecommunications License (as described herein) to provide Telecommunication Services (as defined herein) pursuant to this Agreement.

E. The City is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of such Facilities within the City’s boundaries pursuant to the Page City Code, and by virtue of federal code provisions (47 U.S.C. § 253) and state statutes (including, but not limited to ARIZ. REV. STAT. §§ 9-581, 9-582, and 9-583), by the City’s police powers, its authority over public rights-of-way, and its other governmental powers and authority.

F. The City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements in the rights-of-way.

G. SCC agrees to provide and maintain accurate maps showing the location of all Facilities owned or used by SCC on public rights-of-way within the corporate limits of the City, and to comply with reasonable mapping requirements as City may establish from time to time.

H. SCC will secure the appropriate licenses, encroachment and other permits required by the City Code or Page Electric Utility for the placement of its Facilities placed in the City’s boundaries.

I. SCC agrees to comply with public property use requirements that City has established and may reasonably establish from time to time in accordance with State and Federal laws.

J. There may be portions of the ROW (the “Third Party Areas”) upon which the Facilities may not be built without permission (the “Third Party Permission”) from one or more third parties (the “Third Parties”). The Third Party Areas include areas that have limited ROW dedications or that have regulatory use restrictions imposed by a Third Party.

K. The City retains the right to adopt, from time to time, in addition to the provisions contained in this Agreement, such code provisions, ordinances and rules and regulations as may be deemed necessary by the City to protect and promote the property, health, safety and welfare of the City’s inhabitants.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and SCC hereby agree as follows:

1. Definitions.

1.1 “ACC” means the Arizona Corporation Commission.

1.2 “ARIZ. REV. STAT.” means Arizona Revised Statutes.

1.3 “Call” means the operations required to set up or establish, maintain, and terminate or release a connection through a telephone network in support of a communication between two or more stations. A call comprises a sequence of events that begins when an end user at an originating station initiates a call request to a switch that may work in conjunction with other switches to establish a connection to an end user at a destination station, and concludes when one party (user) terminates the connection.

1.4 “Claim(s)” means and includes losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney’s fees incurred through all appeals.

1.5 “Commercial Mobile Radio Services” means two-way voice commercial mobile radio service as defined by the FCC in 47 U.S.C. § 157.

1.6 “Common Carrier” means a private company offering interstate or foreign communication by wire or radio or the interstate or foreign transmission of energy to the general public on a non-discriminatory basis.

1.7 “Conduit” means a pipe of either metal, ceramic or plastic that protects buried cables.

1.8 “Conduit System” means any combination of Ducts, Conduits, Manholes and handholes joined to form an integrated whole.

1.9 “Contractor” means any person, firm, partnership, corporation, association

or other organization, or a combination of any of them, that performs services or provides goods relating to this Agreement. Contractor shall include any subcontractor hired and/or used by SCC for the performance of services or provision of goods relating to this Agreement.

1.10 "Dark Fiber" means fiber optic strands that are not connected to transmission equipment.

1.11 "Duct" means a single enclosed tube, pipe or channel for enclosing and carrying cables, wires, and other facilities.

1.12 "Equipment" means any tangible asset used to install, repair, or maintain Facilities in any ROW.

1.13 "Facilities" means the plant, equipment, and property used in the provision of communication and Telecommunication Services and not owned by the City, including but not limited to poles, wires, cables, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under Public Highways.

1.14 "FCC" means the Federal Communications Commission.

1.15 "Broadband Telecommunications Network" is a communication system consisting of fiber optic cable, copper cable, coaxial cable, or wireless facilities constructed and operated within the City's public ways, and includes SCC Facilities.

1.16 "Inner-Duct" means a pathway created by subdividing a Duct into smaller channels.

1.17 "Intrastate Call" means a call in a conventional circuit-switched network that originates and terminates in a single state.

1.18 "Interstate Call" means a call in a conventional circuit-switched network that originates in one state and terminates in a different state (or country).

1.19 "Manhole" means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating and maintaining cable and fiber in a Conduit.

1.20 "Multichannel Video System" includes:

(i) A "cable system," as the term is defined in Title VI of the Federal Communications Act of 1934, providing service within the City.

(ii) An "Open Video System," as the term is defined in Title VI of the Federal Communications Act of 1934, 47 U.S.C. § 573 and implementing regulations (47 CFR § 76.1500), providing service within the City.

(iii) Any other system providing Multichannel Video Programming Services within the City, where the service is transmitted in whole or in part via wires or

lines that are in or cross any ROW within the City. The preceding sentence shall apply whether the Provider owns, leases or otherwise obtains the right to use the wires or lines, including wires or lines of a telecommunications Provider used pursuant to tariff or otherwise for that purpose.

(iv) Any other system providing Multichannel Video Programming Services within the City where a license or similar permission or approval from the City is required under applicable law.

For purposes of this Agreement and the license granted herein, "Multichannel Video Programming Services" 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 Programming Services specifically includes, but is not limited to, "cable service" as the term is used in Title VI of the Federal Communications Act of 1934.

1.21 "Parties" shall collectively mean the City of Page, Arizona and South Central Communications, Inc.

1.22 "Provider" means a Telecommunications Corporation that constructs, installs, operates or maintains telecommunications Facilities in the City Public Highways.

1.23 "Public Emergency" means any condition which, in the opinion of City officials, poses an immediate threat to the lives or property of the citizens of Page or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

1.24 "Public Highway" means all the roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the City.

1.25 "Public Service Corporation" means a corporation engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers. However, a message transmitting company is only a Public Service Corporation if it is a Common Carrier.

1.26 "Public Utility Easement" means an easement or other real property right that is granted dedicated, reserved or otherwise conveyed for the use of utility facilities, regardless of the language used in creating such right, and regardless of the inclusion of other authorized uses.

1.27 "Right-of-Way" ("ROW") means an area of land, which by deed, conveyance, agreement, easement, dedication, usage or process of law, is reserved or dedicated to the City for public purposes, including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, public way or drainage.

1.28 "Service Lateral" means an underground facility that is used to transmit,

distribute, or furnish communications from a common source to an end-use customer.

1.29 “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, pay phone services, interstate services (including Interstate Calls), cable services, or the leasing of Dark Fiber for transmission purposes.

1.30 “Telecommunications Corporation” means any Public Service Corporation to the extent that it provides Telecommunications Services in this State.

1.31 “Telecommunications Services” means the offering of Telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

2. Permission to Use Right-of-Way.

2.1 Grant of License. Subject to the provisions of this Agreement, the Page City Code, Page Electric Utility requirements and Arizona and federal law, City hereby grants to SCC permission through a telecommunication license to use the designated Use Area portions of the right-of-way (“ROW”) subject to and conditioned upon SCC’s full, timely, complete and faithful performance of all obligations to be performed or required hereunder by SCC, and SCC hereby accepts the terms and conditions of this Agreement.

2.1.1 Use Areas Defined. The Use Areas are the portion of the Public Utility Easements and ROW within the City’s corporate boundaries as shown on Exhibit A, attached hereto and incorporated herein by reference. The ROW is limited to the public street and alley rights-of-way and Public Utility Easements that are owned by or controlled by City from time to time comprising City’s Public Utility Easement network. The land comprising the ROW will decrease, increase, and otherwise change over time due to abandonments, dedications, annexations, de-annexations, and other events that affect the amount of land included in City’s public utility ROW network inventory. This Agreement shall not allow SCC to use ROW that is abandoned, condemned, removed from the City’s corporate boundaries, or is otherwise no longer part of the City’s Public Utility Easement network.

2.1.2 Non-Use Areas. SCC shall not use or occupy any portion of the Use Areas other than as permitted pursuant to this Agreement, including, but not limited to constructing, operating and maintaining the Broadband Telecommunications Network described in Section 2.2.1.A below. The Facilities shall be confined to the Use Areas. The Use Areas do not include any Third Party areas. SCC agrees that its use of the Third Party Areas is dependent upon Third Party Permission, which permission is outside of the control of the City.

2.2 Conditions of Grant; Permitted Uses. SCC’s use and occupation of the ROW shall in all respects conform to all and each of the following provisions:

2.2.1 Permitted Uses. SCC shall use the portions of the ROW solely for

the uses allowed under this Agreement, and shall conduct no other activity at or from those designated portions of the ROW where it has permission to be. The permitted uses are limited to the following:

A. Constructing, maintaining, repairing and operating the Facilities comprising the Broadband Telecommunications Network described in this Agreement in order to provide high-speed broadband Internet access and Telecommunications Services to locations within the City.

B. To the extent that any Broadband Telecommunications Network within the route within the City carry Intrastate Calls and/or Interstate Calls as referenced by ARIZ. REV. STAT. §§ 9-582 and 9-583, the City hereby grants SCC a revocable and nonexclusive Telecommunications License (the "License") to run concurrently with the Term of this Agreement. The permission granted herein shall be limited to the Broadband Telecommunications Network routes identified in the map submitted to the City as part of SCC's application and to future expansions or extensions that are done by SCC in accordance with this Agreement.

C. Such additional related uses for which City may give consent from time to time. Such additional uses may only be conducted following execution of an amendment to this Agreement expressly setting forth City's giving to SCC such consent. Such amendment may impose conditions and limitations on such consent and may set forth circumstances by which the City may unilaterally revoke such consent.

2.3 Prohibited Uses. All uses of the ROW other than as specifically described in Section 2.2.1 above are prohibited. SCC may not grant permission to third parties to use the Facilities for any use that SCC itself does not have authority under this Agreement. The license granted by this Agreement does not allow SCC to provide one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmission that may be subject to a cable television or video services system license or franchise; provided, however, that nothing in the foregoing sentence shall prohibit SCC from providing streaming video services or Internet access in general. However, the license does not allow use of the Facilities for a Multichannel Video System and/or the providing of Multichannel Video Programming Services by users required to be licensed by ARIZ. REV. STAT. § 9-505 *et seq.* without such users first receiving the applicable license from the City.

2.4 Facilities Limited. The authority to install and construct any Conduit System and/or Broadband Telecommunications Network on City property granted herein authorizes SCC only to install such Facilities as are necessary to construct and operate the infrastructure described in this Agreement in order to provide the authorized Telecommunications Services and Internet access and does not authorize SCC to install or construct any Facilities not expressly provided for in this Agreement.

2.5 Empty Conduit. To the extent that SCC occupies the ROW with solely empty conduit and/or leased Dark Fiber and/or uses the City's ROW to provide services other than the Telecommunication Services as defined by ARIZ. REV. STAT. § 9-581, such use and/or occupation of the ROW is subject to the terms and conditions of this Agreement and any applicable fees, permits



and laws.

2.6 Compliance with Applicable Law. SCC shall comply with all applicable laws as amended from time to time; including but not limited to, the Page City Code and Arizona and federal law, in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for SCC to comply with any law or regulation of the FCC or the ACC to engage in the business activities anticipated by this Agreement, SCC shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement; 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 Agreement without a written modification to this Agreement.

3. Non-Exclusive Rights/Priority Rights.

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

3.2 Subject to City's Use or Occupancy. Any and all rights granted to SCC shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or persons to whom the City has granted rights pursuant to Section 3.3 below, and to manage City's own facilities. Any and all rights to occupy the ROW granted to SCC shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey, create or vest a perpetual real property interest in land to SCC, including any fee or leasehold interest, easement, or any franchise rights.

3.3 Subject to Others' Use or Occupancy. Any right or privilege claimed pursuant to this Agreement by SCC for any use of any public ROW shall be subordinate to: (i) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; (ii) any prior lawful occupancy or use thereof by any other person; and (iii) any prior easements therein; provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

3.4 City's Modification Rights. Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its facilities and/or the ROW, and for that purpose to require SCC, following reasonable notice, typically of not less than ninety (90) days except in the case of emergency or other reasonable circumstances that justify shorter notice, and the opportunity for SCC to provide recommendations to minimize adverse impacts, at no expense to the City, to remove, relocate or abandon in place SCC Facilities in order to accommodate the reasonable activities of the City. The City shall not be liable for lost revenues sustained by SCC, however caused, because of damage, modification, alteration, or destruction of its Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations and do not result due to the City's gross negligence or willful misconduct.

3.5 Condition of Use Areas. The Use Areas are being made available in an "as

is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.

3.6 Rights Reserved to City. There is hereby reserved to City every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful code ordinance, resolution, regulation, standard or requirement of any kind imposed by the City; SCC by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of this Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of City. The reserved rights include the right to use and allow other Competing Users (defined in Subsection 3.6.1 below) to conduct Competing Activities (defined in Subsection 3.6.2 below) at any location upon the Use Areas.

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

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

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

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

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

D. All other uses of the ROW that the City may permit from time to time.

3.6.3 City's Rights Cumulative. All of the City's reserved rights under various provisions of this Agreement shall be cumulative to each other.

3.6.4 Use Priorities. This Agreement does not grant to SCC or establish for SCC any exclusive rights or priority in favor of SCC to use the Use Areas; provided, however, that SCC will have priority of use with respect to non-disturbance and non-interference with its Facilities over any similarly situated commercial Provider whose Competing Activities arise after the date of this Agreement. SCC's use of the Use Areas shall be subordinate to all previously approved Competing Activities, and shall work cooperatively with Competing Activities that arise after the date of this Agreement. SCC shall not obstruct, impede, disrupt or interfere with or prevent any Competing User from using the Use Areas, subject to Section 3.6.6 below.

3.6.5 Regulation. The City shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require SCC to cooperate and participate in implementing such resolutions. Without limitation, the City may take any or all of the following into account in regulating use of the Use Areas:

- A. All timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for Competing Activities.
- B. All other factors the City may consider relevant, whether or not mentioned in this Agreement.
- C. Differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to Competing Users and Competing Activities.

3.6.6 Disruption by Competing Users. The City and its agents, contractors or employees shall not be liable to SCC, its customers or third parties for any service disruption or for any other harm caused them or the Facilities due to Competing Users or Competing Activities; provided, however, that SCC shall have the right to request reasonable accommodations from later-approved Competing Users in the event such Competing Users unreasonably interfere with SCC's permitted uses, and the City shall use its commercially reasonable efforts to encourage and facilitate such reasonable accommodations.

3.6.7 Emergency Disruption by City. The City may remove, alter, tear out, relocate or damage portions of the Facilities in the case of fire, disaster, or other emergencies if the City Manager or designee deems such action to be reasonably necessary under the circumstances. In such event, the City and its agents, contractors or employees shall not be liable to SCC or its customers or third parties for any harm so caused to them or the Facilities. When practical, the City shall consult with SCC 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 SCC after such actions. SCC's work to repair or restore the Facilities shall be Relocation Work as set forth in Section 10 below.

3.6.8 Public Safety. If the Facilities or any other SCC equipment, improvements or activities within the Use Areas present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or without the Use Areas, or to the City's ability to safely and conveniently operate the ROW or perform the City's utility, public safety and other public health, safety and welfare functions, then upon written or oral notice of the hazard by the City, SCC shall immediately remedy the hazard, comply with the City's reasonable requests to secure the Use Areas, and otherwise reasonably cooperate with the City at no expense to the City to remove any such hazard or impediment. SCC's work crews shall report to the Use Areas within two hours of any request by the City under this subsection.

4. Notice of Other Users.

4.1 Third Party Contracts. SCC may enter into contracts with unrelated third parties ("Users") in the ordinary course of SCC's business for use of the Conduit Systems and/or Broadband Telecommunications Networks within the portions of the ROW subject to this Agreement. Such contracts ("User Contracts") shall be subject to all requirements and provisions of this Agreement and the following:

4.1.1 User Contract Required. No person shall transmit voice, video or data over the Broadband Telecommunication Network or otherwise use the Conduit System(s) except under a User Contract with SCC; the identity of such Users must be disclosed to the City upon request, but such information will be considered Confidential and Proprietary under Section 27.3.2. All User Contracts shall prohibit such Users from performing any construction, maintenance, repair or other work of any description in the ROW related to the Broadband Telecommunications Network or Conduit System(s), unless such Users have an agreement with the City.

4.1.2 User Work in ROW. Such Users shall not perform any construction, maintenance, repair or other work of any kind in the ROW related to the Broadband Telecommunications Network or Conduit System(s) unless: (A) the User Contract provides for the User to construct, install, operate or maintain any portion of the Broadband Telecommunications Network or Conduit System(s) within the route in the ROW; and (B) the User has entered into an Agreement with the City for use of the City's ROW.

4.2 SCC Responsible for Third Party Users. SCC shall cause to comply with this Agreement all persons using the ROW through or under SCC or this Agreement. SCC is responsible for any violations of this Agreement by persons using the ROW through or under SCC or this Agreement, but shall not be responsible for any violations of any User of its agreement, if any, with the City.

4.3 Dark Fiber Leases. Should SCC lease Dark Fiber or Conduit to a User within the ROW, SCC shall inform the City within 45 business days of the location and length of the Dark Fiber or Conduit route that is being leased through an indefeasible right of use agreement or similar contractual arrangement. A pro-rated ROW use fee will be calculated from the installation date to the anniversary date of this Agreement and such amount will be added on to the annual fee that will be due on the anniversary date of this Agreement. This additional footage will be added to any current leased Dark Fiber or Conduit footage and used in the calculation of the total annual fee owed on the anniversary date of this Agreement. Identification of the Dark Fiber lessee will be

kept confidential to the extent allowed by law. If there is a public records request for such information, City will contact SCC to allow it an opportunity to seek judicial relief to prevent the disclosure of the lessee's identity.

5. Regulatory Conditions Relating to Right-of-Way Usage. For purposes of this Agreement, whenever work is done in the ROW relating to any of the Facilities, SCC agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all of its Contractors and that the obligations of Sections 5 and 6 are imposed on both SCC and any of its Contractors, who will be considered SCC's agents and for whom SCC will be responsible. SCC will ensure that SCC and its agents comply with Public ROW use requirements as follows:

5.1 Registration. SCC agrees to register with the City by completing an application or renewal application form and paying the applicable application fee as set forth in Section 19.2.1 herein.

5.2 Notice of Changes. SCC shall file a proposed amendment to the registration before it makes any change that would render the registration information incomplete or inaccurate. A change of SCC's name or address must be filed at least 10 days prior to the date the change becomes effective; a change in the telephone number must be filed 10 days before the change becomes effective.

5.3 Facilities Construction. SCC is completely responsible for ensuring that its Facilities are constructed, installed, operated and/or maintained in accordance with the Page City Code and established practices with respect to such public ROW and easements. The proper permits must be applied for prior to commencing any work, and the terms and conditions of such permits must be strictly followed.

5.4 Plan Approval. Any Facilities installed in the public ROW and easements under the control of the City from and after the date of this Agreement shall be according to plans approved by the City Engineer, provided that such approval shall not be unreasonably withheld or delayed.

5.5 Interference Minimized. Any Facilities constructed, installed, operated, maintained, upgraded and removed hereunder, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within said public ROW and easements, including Competing Activities. Any phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Facilities shall be subject to regulation by the City.

5.6 City's Reserved Powers. SCC and its agents shall be subject to the City's exercise of such police, regulatory and other powers as it now has or may later obtain, and SCC may not waive the application of the same. City shall have continuing jurisdiction and supervision over any Facilities located within or on public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the City Manager or designee to interpret, administer and enforce the provisions of this Agreement.

5.7 Signs. All new and existing signage shall comply with all City or other applicable regulations as well as the following requirements, with the most restrictive provision

controlling:

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

5.7.2 Signs Covered. This Section 5.7 shall apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.

5.8 Lighting. Lighting is prohibited except as this Agreement may specifically allow for construction activities.

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

5.9.1 No Amplified Sound. Except for vehicle backup alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited.

5.9.2 Sound Control Devices. All equipment must be equipped with appropriate mufflers and other sound control devices.

5.10 Governmental and Neighborhood Relations. SCC shall conduct its activities in coordination with the City as necessary to maintain good relations with all third parties, governmental and other entities having jurisdiction over the Use Areas, all other occupants of the Use Areas, and the occupants of surrounding real property. SCC shall immediately notify the City in writing of any actual or threatened dispute, violation or other disagreement with other utilities or users relating to the Use Areas. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Use Areas): (i) State of Arizona, (ii) Coconino County, (iii) Bureau of Reclamation, and (iv) Salt River Project. Notwithstanding SCC's obligations under this Section 5.10, SCC is not an agent for the City.

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

5.12 Coordination Meetings. SCC shall meet with the City and other ROW users from time to time as reasonably requested by the City to coordinate and plan construction on the ROW and all matters affected by this Agreement.

5.13 Regulatory Approval Process. The building permit processes, ROW

management and similar regulatory requirements that apply to SCC's Facilities are completely separate from the requirements of this Agreement. SCC's satisfaction of any requirement of this Agreement does not in itself count toward any compliance with any regulatory requirement. SCC's satisfaction of any regulatory requirement does not in itself count toward compliance with any requirement of this Agreement. SCC must make all submittals and communications regarding the requirements of this Agreement through the City's contract administrator for this Agreement, and not through planning, building safety or other staff. SCC must obtain all approvals in accordance with all present and future City codes, policies and procedures.

5.14 Relationship of Plans Approval to Regulatory Processes. SCC's submission of plans under this Agreement, the City's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. Building permits, zoning clearances, or any other governmental reviews or actions do not constitute approval of any plans for purposes of this Agreement.

## 6. Plan Approval, Permits and Inspection.

6.1 Required Approvals. From and after the date of this Agreement, no Facilities shall be installed, constructed, located on, or attached to any property within the corporate limits of the City until SCC has applied for and received approval for permits from the City as set forth in Section 6.2. SCC shall be solely responsible for any and all acts, errors, omissions and negligence of its Contractor(s) who are involved in the installation, construction, maintenance, repair, location, relocation and any other activity involving SCC's Facilities subject to this Agreement. Additionally, SCC and its Contractor(s) shall comply with all other provisions of the Page City Code, including but not limited to provisions regarding streets and sidewalks, and other applicable City and/or Coconino County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to SCC's use of the public ROW as may be deemed best for the public interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW.

6.2 Permits; Licenses. SCC shall submit the applicable permit application(s) for each project within the ROW, together with the details, plans and specifications for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this Agreement. SCC and/or its Contractor(s) shall abide by all stipulations of all licenses and permits issued. If SCC desires to change the location of any portion of the Conduit System(s) and/or Broadband Telecommunications Network, including any related Facilities or equipment, from that set forth in the initial Permit Application, SCC shall apply for and obtain approval for an amendment to the permit prior to installation or construction.

6.3 Multiple Permit Policy. The City may issue reasonable policy guidelines to all licensees/users to establish procedures for determining how to control issuance of engineering permits to multiple licensees/users for the same one mile segments of their Facilities. SCC agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City to coordinate the issuance of multiple engineering permits in the same one mile

segments.

6.4 Approval; Denial. City will approve or deny such applications in accordance with its adopted permitting timelines based on the availability of space at the location sought by SCC, safety and other considerations in accordance with the City Code, applicable ROW construction regulations and other applicable law. SCC and/or its Contractor(s) agree to comply with the terms of any City-issued licenses and permits.

6.5 Construction Standards. Any new Conduit or other Facilities placed in the ROW will be constructed using industry standard horizontal directional drilling and trenching construction methods. SCC and/or its Contractor(s) will install any new Conduit and access points (Manholes/pull boxes) using industry standard practices and in full compliance with Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG Specifications") and the City of Page general engineering requirements.

6.6 System Component Changes. If SCC desires to change the components of any of the Broadband Telecommunications Network and such would require SCC to obtain a permit, written approval of such change must be obtained from the City.

6.7 Specifications. The City shall have the right to inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it shall find necessary to meet City standards as set forth in the City of Page general engineering requirements and the MAG Specifications and to ensure compliance with the terms of this Agreement and other pertinent provisions of law.

6.8 New System Installation. Any new Conduit system(s) and/or Broadband Telecommunications Network shall be installed as agreed upon by SCC and the City. If portions of this project will take place on the principal arterial streets (US 89 and AZ 98) and minor arterial streets (N. Lake Powell Boulevard, S. Lake Powell Boulevard and Coppermine Road) in City, SCC and City will work to minimize the inconvenience to the citizens of City and others who use these principal and minor arterial streets impacted by the project by developing segments of the project to be completed in sequence.

6.9 Minimal Interference with City Uses. Any Conduit systems and/or Broadband Telecommunications Network to be constructed, installed, operated and maintained under this Agreement shall be located or relocated so as to interfere as little as possible with traffic, existing utilities or other authorized uses over, under or through said ROW. SCC shall not install, operate, or allow the use of equipment, methodology or technology that may or would unreasonably interfere with the optimum effective use or operation of City's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying receiving or transmitting equipment). If such unreasonable interference should occur, SCC shall immediately discontinue using the equipment, methodology or technology that causes the interference until SCC takes corrective measures to alter the Broadband Telecommunications Network to eliminate such interference. Any such corrective measures shall be made at no cost to City. SCC shall be responsible to ensure compliance with this Agreement by all persons using the ROW through or under SCC pursuant to this Agreement.



6.10 Co-location. SCC's installation of the Facilities shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along with SCC's route as set forth in this Agreement; provided that the each party shall provide the other with reasonable notice of projects within the ROW relating to new facilities to allow for such coordination. All installations of cable and/or fiber shall be in Conduit or Inner- Duct as reasonably approved by the City Engineer or authorized designee; provided, however nothing herein shall require SCC to incur any additional expense to accommodate common installations.

6.11 Facility Location Street Opening. Although the exact placement and location of any additional Facilities shall be determined by City through the permit process, SCC has expressed its intent and City has expressed its desire to have any Facilities installed outside of the paved street areas whenever such location is commercially feasible and reasonable. Further, if it is the intent and desire of SCC for the Conduit System to be placed by horizontal directional drilling under such streets when feasible and reasonable; bore profiles based on vacuum pothole information shall be part of the engineered plans submitted to the City. Arterial streets shall not be bored unless approved by the City Engineer or authorized designee.

6.11.1 Street Opening Surcharge. In the event that a street opening in new pavement or resurfaced pavement cannot be avoided, SCC agrees to pay a reasonable surcharge fee to cover damages and early deterioration will be assessed for cutting new or resurfaced pavements less than seven years old.

6.11.2 Closure Requests. Whenever SCC or its Contractors shall cause any opening or alteration to be made for any purpose in any public streets or public places, the opening or alteration shall be completed and restored with due diligence within seven business days or such time as allowed by the City Engineer. SCC shall, upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by SCC or its Contractors to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

6.12 SCC Representative. SCC shall also provide and identify a representative, such as a project manager, who shall be the contact person for the City during any construction periods.

6.13 Neighbor Notification. Prior to the start of any construction work, SCC shall provide written notice to the businesses and/or residences adjacent to the work being done. If an emergency requires activity without such written notice, SCC shall use reasonable best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Upon request, SCC shall promptly furnish to City documentation of such permission from such other affected property owner.

6.14 Traffic Control.

6.14.1 Regulatory Requirements. All traffic shall be regulated in accordance with: MAG Specifications, the Manual on Uniform Traffic Control Devices and any special provisions included herein or as part of a permit issued according to this Agreement.

6.14.2 Traffic Representatives. At the time of the pre-construction conference, SCC shall designate an American Traffic Safety Services Association certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to ensure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

6.14.3 Traffic Control Plan. SCC shall have the full responsibility and liability for traffic control for work performed by SCC or its Contractors. SCC shall submit a "Traffic Control Plan" to the City Engineer for approval at least one week prior to beginning work under this Agreement. It shall be noted that traffic under this Agreement shall include all motor vehicles, bicyclists, and pedestrians. SCC shall not begin construction until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be maintained onsite during all phases of construction; the City may cause SCC to cease construction until the Traffic Control Plan is provided.

6.14.4 Plan Alternatives. During construction it may be necessary to alter traffic control as approved by the City Engineer. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations." SCC shall pay any and all applicable barricade fees.

6.14.5 Plan Costs. City will make no payment for traffic control. The cost for any fees shall be SCC's responsibility.

6.14.6 Damage to City Traffic Control Devices. In the event SCC or its Contractor(s) damages any traffic signal equipment, traffic signal conduit, loop detectors and/or circuits, it shall have them repaired immediately at its expense by an electrical Contractor that has had traffic signal experience and that is pre-approved by the City. Any damage caused by SCC or its Contractor(s) or subcontractors that is repaired by the City will be billed to SCC at 1.5 times the reasonable costs incurred by the City.

6.14.7 Neighbor Notifications. SCC shall notify all adjacent or affected residents or businesses at least 48 hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

6.14.8 Pedestrian Access. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by the City Engineer.

6.14.9 Speed Limits. Speed limits shall be strictly enforced.

6.15 Clean Up. SCC and/or its Contractor(s) shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials

provided for in the work, and shall maintain the work and public ROW in a safe, neat and clean condition.

6.16 Safety. SCC and SCC's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the infrastructure is being placed, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. SCC's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve SCC from compliance with these provisions.

6.17 Blue Stake. SCC and its Contractor(s) shall comply with ARIZ. REV. STAT. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of SCC's Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two working days. A copy of the agreement or proof of membership shall be filed with the City Engineer.

## 7. Hazardous Substances.

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

7.2 Toxic Substance Restrictions. SCC and/or its Contractor(s) shall not produce, dispose of, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

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

7.2.2 Batteries. Electric backup batteries.

7.3 Disposal. SCC and/or its Contractor(s) shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by City.

7.4 Use Restriction. SCC and/or its Contractor(s) shall not use the ROW in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality,

or in a manner that would require a permit or approval from the Arizona Department of Environment Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this Agreement.

7.5 City Held Harmless. In addition to and without limitation of any other indemnities or obligations, SCC shall pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW used that is attributable to or directly caused by SCC, its Contractor(s) or anyone using the ROW under this Agreement.

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

7.7 Notice to City. SCC and/or its Contractor(s) shall immediately notify City of any Toxic Substance at any time discovered or known by SCC and/or its Contractor(s) to exist upon the ROW, whether or not such existence is a result of a violation of this Section 7. SCC is not responsible for Toxic Substances that may be known by SCC and/or its Contractor(s) to exist at the ROW as long as SCC's Contractors and/or; any other persons using the ROW under this Agreement did not do any of the following: (i) participate in the Toxic Material coming to the ROW; (ii) fail to immediately report the Toxic Material to City; (iii) participate in spreading or otherwise disturbing the Toxic Material; or (iv) exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material.

7.8 Acknowledgment of Potential Toxic Substances. SCC understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. SCC acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic-Substances containing-materials.

8. On-Call Assistance. SCC shall be available to staff employees of any City department having jurisdiction over SCC's activities 24 hours per day, 7 days per week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Network. The City may contact by telephone the network operations center operator at the following phone number 435-708-0911 regarding such problems or complaints, and may use that number in order to reach SCC at any time for any emergency matter. SCC shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. SCC shall make arrangements with a local entity to handle any necessary problems or complaints that

require a physical presence.

9. Mapping Requirement.

9.1 As-Built Drawings. SCC shall maintain As-Built Drawings of its Facilities located within the ROW and shall furnish a copy 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) or the City may elect to receive As-Built Drawings in hard copy form on an annual basis or upon reasonable request by the City. SCC shall create and maintain maps of any of its Conduit System and/or Broadband Telecommunications Network routes, new routes, and any above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City. SCC will also provide surface-location marking of any of SCC's Facilities that are located underground within any public ROW within 10 business days of installation. The information provided by SCC under this section will be accurate to the best of SCC's knowledge. SCC shall 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. SCC shall be permitted to remove any information from the drawings provided hereunder that is not required for the City's purposes or is otherwise confidential to SCC.

9.2 Failure to Provide Updates. If complete updates are not provided in a compatible format, SCC shall pay the actual, reasonable costs, plus 15% administrative mark-up, the City incurs to update the City's electronic mapping format due to the location or relocation of SCC's Facilities.

9.3 Incorrect Format Records. In the event SCC fails to supply records in the City specified format and there is a cost to the City in converting SCC provided files, SCC will be responsible for the conversion costs and will pay such costs within 30 days of the date of the bill from the City invoicing the amount due.

9.4 Confidentiality. The files and drawings provided by SCC to the City shall be considered confidential and subject to the restrictions in Section 27 below and disclosed as a public record only to the extent required by ARIZ. REV. STAT. § 39-126.01.

10. Relocation.

10.1 Relocation Costs. Except as provided in Section 10.2 below, SCC shall relocate at no expense to the City, any Facilities or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose for any City project on not less than ninety (90) days written notice from the City. However, to the extent that the City receives funds from any third parties or government entities for a project that requires the relocation of Facilities owned, operated and/or maintained by SCC, and subject to multiple licensee relocations, as described in this Section 10.1, the City shall allocate the portion of such funds earmarked for relocating Facilities to reimburse SCC for the actual cost to relocate its Facilities and shall promptly disperse to SCC its portion of such funds after the City's receipt, with reasonable documentation supporting such allocated amount. If more than one licensee is required to relocate for the same project, and is eligible for reimbursement, any such funds shall be distributed on a pro rata basis based on the total relocation costs of each of the licensees eligible

for such reimbursement. SCC shall not hold the City liable for failure to request or file a claim for any funds for the relocation of SCC's Facilities. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. SCC shall comply with any and all requirements of the Page City Code. Within 90 days after service of notice by the City, SCC shall remove the designated portions of the Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the 90-day period, SCC shall take reasonable steps to remove the Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City. City agrees to cooperate with SCC to identify alternate locations where available within the ROW.

10.2 If for aesthetic purposes, the City requests relocation of SCC's Facilities that were approved by the City through the permitting process subsequent to this Agreement, the City shall pay all costs associated with the relocation.

10.3 Relocation Permits. SCC agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating or reconstructing of any portion of its Conduit System(s) or Broadband Telecommunications Network on public property or ROW. Notwithstanding the foregoing, City understands and acknowledges there may be instances when SCC is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the Facilities. SCC will maintain any annual permits required by the City for such maintenance and emergency repairs. SCC will notify City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

10.4 City Self- Help. If the City needs to perform any part of the necessary relocation or removal work that has not been done by SCC within the time required by the City, it shall be entitled to seek payment for such reasonable relocation costs from SCC.

10.5 SCC Consent. Except as otherwise provided herein, City shall not, without the prior, written approval of SCC, intentionally alter, remove, relocate or otherwise interfere with any portion of SCC's Facilities. Any written approval required shall be promptly reviewed and processed by SCC and shall not be unreasonably withheld.

## 11. Damage to Public Property.

11.1 Duty to Restore Damage. In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of SCC's Facilities is required or permitted under this Agreement, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, SCC, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, to as good a condition as before, in accordance with applicable laws, normal wear and tear excepted; such work shall be completed in a manner reasonably satisfactory to the City Engineer. If SCC does not repair the damage or disturbance as just described, then City shall have the option, upon 10 days prior, written notice to SCC, to perform or cause to be performed such reasonable and necessary work on behalf of SCC and to charge SCC

for the actual reasonable costs incurred by the City at City's standard rates, plus a 15% administrative mark-up.

11.2 Emergency Restoration. Notwithstanding the notice provision above, in the event of a Public Emergency, the City shall have the right to immediately perform, without prior, written notice to SCC, such reasonable and necessary work on behalf of SCC to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted; such work shall be completed in a manner reasonably satisfactory to the City Engineer. The City shall provide written notice to SCC of the repairs as soon as practicable after the work has begun. SCC agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs, relocation and/or removal costs from SCC and may draw upon a bond and/or letter of credit or security fund required by this Agreement in full or partial satisfaction of such costs, if payment is not made by SCC as required by Section 11.3 below.

11.3 Pavement Restoration Costs. For any pavement cuts by SCC, SCC agrees to restore the pavement and to reimburse the City for all direct, reasonable costs arising from the reduction in the service life of any public road, in accordance with the provisions of the Page City Code and the fees established by the City pursuant thereto. SCC agrees to pay amount owed within 30 days from the date of issuance of an invoice from City. Failure to do so shall entitle City to draw upon the letter of credit or security fund and/or performance bond.

11.4 Payment Deadline. Upon the receipt of a demand for payment by City, SCC shall, within 30 days, reimburse City for any undisputed costs.

12. Public Emergency Disruption by City. City shall have the right, because of a Public Emergency, to take reasonable action, including severing, disrupting, removing, tearing out, digging-up or otherwise damaging and/or destroying SCC's Facilities without any prior notice to SCC, if the action is deemed necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director, or designees. In such event, the City and its agents, contractors or employees shall not be liable to SCC, its Contractors or its customers or third parties for any harm so caused to them or the Facilities, unless such damages are caused by City's gross negligence or willful misconduct. When practical and if possible, City will consult with SCC 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 Broadband Telecommunications Network. City shall inform SCC of any actions taken. SCC shall be responsible for repair at its sole expense of any of its Facilities damaged pursuant to any such action taken by City.

13. Public Safety/Hazard Disruption. If any of SCC's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety and/or other public health, safety and welfare functions, then SCC shall immediately remedy the hazard, comply with City's request to secure the route area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment. In the event of a response to a hazard, the City and its agents, contractors or employees shall not be liable to SCC or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, contractors or employees

in responding to such hazard, unless such damages are caused by City's gross negligence or willful misconduct. When practical and if possible, City will consult with SCC in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or the Facilities involved.

14. Contractors.

14.1 Required Licensing. Any Contractors performing construction work within the ROW or public easements shall comply with all applicable licensing requirements for general contractors in Arizona.

14.2 SCC Representation Regarding Independent Contractors. SCC represents and warrants all independent Contractors maintain coverages the same as all the requirements stated herein for SCC.

15. Legal Workers. If, and to the extent ARIZ. REV. STAT. § 41-4401 is applicable to this Agreement, SCC shall comply with laws regarding workers as follows:

15.1 Warranty of Compliance. SCC warrants to City that SCC and all of its Contractors will comply with all federal immigration laws and regulations that relate to their employees and that there is compliance with the E-Verify Program under ARIZ. REV. STAT. § 23-214(A).

15.2 Breach of Warranty. A breach of the foregoing warranty by SCC shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement, subject to the provisions of Section 30.2 herein.

15.3 Inspection of Records. City retains the legal right to inspect the papers of any employee of SCC Contractor who works pursuant to this Agreement to ensure that they are complying with the warranty given above.

15.4 SCC Warranty of Violations. SCC shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

16. Validity of Agreement. SCC hereby acknowledges that, as a condition of acceptance of this Agreement, SCC was required to be represented throughout the negotiations of the Agreement by its own attorneys and SCC had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. SCC has reviewed City's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, SCC acknowledges and accepts the right and authority of City to execute this Agreement and to enforce the terms herein.

17. Term of Agreement. The initial term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until 12:00 a.m. on the date that is the twentieth annual anniversary of the Effective Date (the "Initial Term"), unless sooner terminated as set forth in this Agreement.



18. Modification, Renewal, Extension.

18.1 Renewal Process. If SCC has complied with the Agreement's terms and conditions at the end of the Initial Term, this Agreement shall be renewed for additional five-year periods (each, an "Extension Term"), unless either party provides written notice of non-extension to the other party at least one hundred and eighty (180) days prior to the expiration of the then-current Term. The Initial Term and any Extension Term are referred to collectively as the "Term." Such Extension Terms would expire at 12:00 a.m. on the date that is the anniversary of the Effective Date that is five years after the beginning of such Extension Term.

18.2 Renewal Fee. SCC shall pay to City a renewal fee of \$750 at the time of the Extension Term, provided the City is legally permitted to impose such fee and such fee is reasonably related to the actual cost to the City, including professional services and legal fees, for reviewing the impact to the City relating to any such Extension Term.

18.3 Agreement Changes. City shall have the right to renegotiate any of the terms from the Agreement that may be required by applicable federal, state or local law or regulations. SCC understands that the City may adopt future code amendments and/or fee schedules relating to Facilities located within the ROW, which may replace in their entirety the current fees and other costs imposed upon SCC under this Agreement; provided that all such fees and costs are consistent with and equivalent to those imposed on similarly-situated Users of the City's ROW; provided, further that such fee adjustments shall not affect the fee for use of right-of-way set forth in Section 19.2.3 below. SCC acknowledges the right of the City to adopt and implement such lawful and applicable code amendments and/or fee schedules.

18.4 Holdover Term. If SCC's Facilities remain in the ROW, and SCC continues to use such Facilities beyond the expiration of this Agreement and continues to pay the annual fees, SCC shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed 60 days beyond the expiration of the Term or until the date of the first City Council meeting scheduled immediately after the expiration of the Term, and no permits will be issued to SCC by the City until a new Agreement has been approved by the City Council.

18.5 Expiration of Holdover Term. Failure by SCC to have a valid Agreement to use the ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the City to SCC and the liquidated damages amount set forth in Section 29 shall apply. If, however, SCC has timely filed its application and is in active negotiations with the City prior to the expiration of the Agreement, the City may, in its discretion, grant, extend, or take no action on permits issued to SCC prior to the expiration of the Agreement.

19. Payments.

19.1 No Rights Waived. By entering into this Agreement, neither party waives any current or future rights reserved under the Telecommunications Act of 1996, including but not limited to, those rights set forth in Sections 253(c), reserving the City's right to manage the public ROW and to require fair, non-discriminatory and reasonable compensation from SCC for use of the public ROW.

19.2 Payments to City. SCC shall be solely responsible for payments to City as follows:

19.2.1 Application Fee. SCC shall pay City an application fee of \$750.00 for the administrative costs involved in the issuance of a telecommunications license, which shall be due at the time of the submittal of the application.

19.2.2 Transaction Privilege Tax. SCC will owe transaction privilege tax on any qualifying services under the Page Tax Code.

19.2.3 Fee for Use of Right-of-Way. In lieu of an annual fee for SCC to use of the Right-of-Way, SCC shall provide infrastructure and services to the City, which infrastructure and services are agreed to be adequate and reasonable consideration for the use of the City Right-of-Way. The infrastructure and services that SCC will provide during the Initial Term of this Agreement shall include fiber to City facilities as identified in Exhibit B (the "City Facilities Fiber"). SCC shall bear all costs to install fiber to such City facilities and shall be solely responsible to maintain and repair such fibers in accordance with standard industry practices at SCC's cost.

A. In the event that SCC fails to install the City Facilities Fiber by the dates set forth on Exhibit B, or in the event that SCC fails to reasonably maintain and keep said fiber in good repair, the City may elect to impose, in lieu of SCC providing the fiber and related services identified in Exhibit B, an annual fee of \$0.75 per linear foot for all underground facilities installed by SCC in the City Right-of-Way. The City may also elect to impose the linear foot fee in lieu of SCC providing the City Facilities Fiber as set forth in Exhibit B, adjusted in accordance with 19.2.3(B), at the beginning of any Extension Term.

B. Commencing on the anniversary date of this Agreement in 2025, the linear foot fee shall be escalated annually each January 1 based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for All Items ("CPI"). If, on a relevant date, the CPI does not exist in the above format, the City will substitute any official index published by the Bureau of Labor Statistics, any successor agency, or similar governmental agency, which is then in existence and which is then most nearly comparable to the CPI. If there is no increase in the CPI or substitute index, the fee shall remain what it was for the prior year.

C. SCC warrants and represents that it has no route within Page that provides solely interstate Telecommunication Services in which no Page customers are served (long haul routes with out-of-state customers not subject to City transaction privilege tax for Telecommunication Services). If and when there are portions of SCC's routes that provide interstate Telecommunication Services in which no Page customers are served, SCC will immediately notify the City of the location and footage of such route(s) and pay a pro-rated linear foot fee that is due for the length of such route(s). At the next anniversary date of the Agreement, the yearly fee for such additional footage will be added to the then-current annual fee.

D. Upon each anniversary of this Agreement, any fee owed will be

adjusted as provided by Subsection 19.2.3 (A) above, and payment made by as required by Section 19.3.

E. The foregoing fee for the use of the ROW shall not apply to any fiber route leased by SCC from Page Public Utility Enterprises.

19.2.4 Compensation for Use of ROW. In the event that the annual fee is imposed by the City as set forth in 19.2.3(A), SCC agrees to pay an annual fee for the portion of the ROW used by SCC for Dark Fiber or Conduit leasing to Users (which for the avoidance of doubts excludes Dark Fiber or Conduit provided to and used by the City pursuant to this Section 19), empty conduit occupation of the ROW and any uses other than those solely conforming to the definition of Telecommunications Services as defined in ARIZ. REV. STAT. § 9-581. Unless a different calculation for fair and reasonable compensation is agreed to by the City, the fee will be calculated at the same linear foot rate as in Section 19.2.3(A) above. Upon each anniversary of this Agreement, any monetary fee will be adjusted as provided by Subsection 19.2.3(B) above, and payment made by as required by Section 19.3. SCC warrants and represents that at the time of the execution of this Agreement, it is not leasing Dark Fiber or Conduit to other third party Users within the ROW. In the future, should SCC lease any of its Dark Fiber or Conduits to another third-party User, SCC shall immediately notify the City of the location and footage of such leased Dark Fiber or Conduit route(s) and pay a pro-rated linear foot fee that is due for the length of such route(s), unless a different calculation for fair and reasonable compensation is agreed to by the City.

19.3 Annual Payments. For any annual payment(s) owed, SCC shall make such payment(s) to the City within 30 business days of the Effective Date and thereafter each year by the anniversary of such Effective Date thereof for the duration of the Term.

19.4 Permit Fees. SCC shall pay all applicable construction permit fees to place Facilities in the ROW, which includes charges for encroachment permit applications, issuance, inspection, testing, plan review and any other fees adopted by City and applicable to persons doing work and/or encroaching in the City's ROW pursuant to the Page City Code

19.5 Damage Fees. SCC shall pay any reasonable costs associated with any damage caused to the ROW or public property. Such Damage Fees shall be due to the City not later than 30 days after the City's written notice to SCC of such amounts.

19.6 Pro-rated Fees. Within 30 days after the issuance of a permit for the installation of additional footage of Conduit(s), if such installation subjects SCC to an annual fee pursuant to Section 19.2.3 above, SCC will pay a pro-rated portion of the annual fee, as adjusted, per linear foot for that section of its expanded route. The prorated annual fee shall be determined by multiplying the annual footage fee, as adjusted, for the year of payment, by a fraction, the numerator of which is the number of full months between the month installation and the next following anniversary date of this Agreement and the denominator of which is 12. In the event SCC cancels or returns a permit and does not construct or install Facilities that had previously been approved by such a permit, the footage fees previously paid for ROW or public property used or occupied by SCC shall be applied as a credit toward any annual fee or refunded to SCC by City.

19.7 Late Fees. Payment is deemed paid only when the City actually receives a good cash payment. Should any payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of 10% of the amount due, or \$100. Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and 1.5% per month from the date the amount first came due until paid. SCC expressly agrees that the foregoing represent fair and reasonable estimates by the City and SCC of the City's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delayed payment. The City shall have the right to allocate payments received from SCC among SCC's obligations.

19.8 Fee Payment Amount Report. Each installment of payment by SCC, other than permit fee payment, shall include a report showing the manner in which each component of the fee payment was calculated. The report shall summarize the transactions giving rise to the payment.

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

20. Taxes. SCC shall pay any applicable City, county and state transaction privilege and use tax. Such taxes are in addition to any non-tax amounts owed by SCC pursuant to Section 20. SCC consents to the disclosure of any and all information reported on SCC's transaction privilege tax returns by authorizing and allowing the City's tax collector to release such information to the City Manager or authorized designee.

21. Performance Bond.

21.1 Bond Requirements. With prior written notice, prior to receiving any permit to construct, install, maintain or perform any work on public property that requires a permit from the City pursuant to applicable City codes, the City may require SCC to file and maintain until either completion of the construction or termination of this Agreement as determined by SCC, a faithful performance bond in favor of City in an amount up to \$100,000 for the Broadband Telecommunications Network to guarantee that SCC shall construct the Broadband Telecommunications Network as contemplated by this Agreement. Said bond shall be acknowledged by SCC, 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 SCC 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 and/or letter of credit.

21.2 Bond Release. If SCC has completed the above construction, or substantial portions thereof, and requests that the bond, or the related portion thereof, be released, the City shall promptly inspect and approve the construction prior to such partial or complete release, which approval shall not be unreasonably withheld, delayed or conditioned. Subsequent or additional construction beyond the Broadband Telecommunications Network contemplated by the Grant shall require a new performance bond, the amount of which shall be reasonably proportionate to the cost or value of such construction in comparison to the initial bond.

22. Insurance.

22.1 General.

22.1.1 Insurer Qualifications. Without limiting any obligations or liabilities of SCC, SCC shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Ariz. Rev. Stat. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

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

22.1.3 Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

22.1.4 Coverage Term. 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 Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

22.1.5 Primary Insurance. SCC's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

22.1.6 Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

22.1.7 Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of SCC.

22.1.8 Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. SCC shall be solely responsible for any such deductible or self-insured retention amount.

22.1.9 Use of Subcontractors. If any work under this Agreement is subcontracted in any way, SCC shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and SCC. SCC shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

22.1.10 Evidence of Insurance. Prior to commencing any work or services under this Agreement, SCC will provide the City with suitable evidence of insurance in the form of certificates of insurance and related endorsements. The City shall reasonably rely upon the certificates of insurance and endorsements as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be SCC's responsibility to forward renewal certificates and endorsements to the City 5 days following the expiration date. All certificates of insurance and endorsements required by this Agreement shall be identified by referencing this Agreement. Additionally, certificates of insurance and endorsements submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and endorsements shall specifically include the following provisions:

A. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(i) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 04 13 or equivalent.

(ii) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(iii) Excess Liability – Follow Form to underlying insurance.

B. SCC's insurance shall be primary insurance with respect to performance of this Agreement.

C. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by SCC under this Agreement.

ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of

insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

22.1.11 Endorsements. SCC shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Section. SCC hereby represents and warrants that the endorsements attached hereto as Exhibit C are currently in full force and effect as part of the applicable insurance policies required hereby and hereby covenants that such endorsements or their equivalents shall remain in full force and effect for the Term of this Agreement. Notwithstanding the foregoing, if required during the Term hereof, SCC may provide such further evidence regarding necessary endorsements either by (A) submitting the complete policy to the City for its inspection, or (B) submitting to the City the endorsement provisions with an accompanying corporate certificate of the SCC official executing this Agreement (or equivalent authorized officer) certifying that such provisions are in full force and effect on the Effective Date for the benefit of the City and that such endorsements shall remain in effect at all times during the Term of this Agreement.

## 22.2 Required Insurance Coverage.

22.2.1 Commercial General Liability. SCC shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products- completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 04 13, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

22.2.2 Vehicle Liability. SCC shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on SCC owned, hired and non-owned vehicles assigned to or used in the performance of SCC work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope

than underlying insurance.

22.2.3 Professional Liability. If this Agreement is the subject of any professional services or work, or if SCC engages in any professional services or work in any way related to performing the work under this Agreement, SCC shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by SCC, or anyone employed by SCC, or anyone for whose negligent acts, mistakes, errors and omissions SCC is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

22.2.4 Workers' Compensation Insurance. If SCC employs anyone who is required by law to be covered by workers' compensation insurance, SCC shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over SCC employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

22.2.5 Builder's Risk Insurance. SCC shall be responsible for purchasing and maintaining insurance to protect the Facilities from perils of physical loss. The insurance shall provide for the full cost of replacement for the Facilities at the time of any loss. The insurance shall include as the named insured SCC and shall insure against loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, resulting loss arising from defective design, negligent workmanship or defective material. SCC shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

22.3 Cancellation and Expiration Notice. Upon receipt of notice from its insurer, SCC shall provide the City notice of cancellation of any insurance policy required under this Agreement.

## 23. Indemnity.

23.1 Generally. SCC acknowledges that it has liability for any and all of its Facilities installed in the public ROW and for its use of the ROW and for its exercise of its rights under this Agreement directly or through its Contractor(s), except to the extent of intentional acts or gross negligence on the part of the City. To the fullest extent permitted by law, SCC, shall defend, indemnify and hold harmless the City, or its officials, boards, commissions, agents or employees, individually and collectively, for, from and against any and all third party Claims (as defined in Section 1) arising out of or alleged to have resulted from or materially related to the acts, errors, mistakes, omissions of SCC, its employees, agents, or any tier of Contractors or any other person for whose acts, errors, mistakes, or omissions SCC may be legally liable and from any Claims or amounts arising or recovered under workers compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of SCC, its agent, employees or representatives to fulfill SCC obligations under this Agreement, whether resolution of the above Claim(s) proceeds to judgment or not. The provisions of this paragraph shall survive termination of this Agreement. This indemnification applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable



duty.

23.2 Defense Costs. SCC further agrees to indemnify and hold harmless the City, its officers and its employees from and against all costs, damages, and expenses incurred by the City, its officers and its employees in the defense of any litigation brought by third parties challenging the right of the City to enter into this Agreement with SCC under City or other applicable law.

23.3 Tender of Defense. In the event that any notice of claim is served or litigation is commenced, City shall tender the defense of the litigation to SCC, who shall immediately defend the litigation. SCC shall have the right to retain counsel of its own choice and expense, to settle all or any part of the litigation on terms acceptable to SCC (and, where such terms directly obligate or affect City, acceptable to City). SCC agrees to keep the Page City Attorney's Office informed of the status and progress of all litigation involving the City that has been tendered to SCC or its insurance carrier.

23.3.1 Notice. The Parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City and provide copies of all relevant accident reports, incident reports, statements or other documents relevant to or which may lead to relevant materials or information, in the possession of the other party, its employees, agents, subcontractors, and/or others, promptly upon request.

23.3.2 Relevant Information. Both Parties agree to make their employees, agents, and Contractors available to the other party to gather any relevant information relating to an incident in which claims, demands, or lawsuits arise from.

23.4 Construction of Interpretation. It is the purpose of this Section 23 to provide maximum indemnification to City under the terms and conditions expressed and, in the event of a dispute, this Section 23 shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by SCC against any and all Claims by third parties. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose from and to the extent of City's sole gross negligence or intentional acts. Only in this event may SCC then commence an action against City for damages related to that portion judicially determined to be City's fault.

23.5 Survival. The provisions of this Section 23 shall be and remain a binding right and obligation of the City and SCC. It is the intent of SCC and the City upon the Effective Date of this Agreement that this Section 23 serves as any such declaration and shall be a binding obligation of and inure to the benefit of SCC and the City and their respective successors and assigns, if any. Any failure by SCC to indemnify the City as required under this Section 23 shall be considered a material breach of this Agreement. Notwithstanding anything to the contrary herein, SCC shall not be obligated to indemnify the City on any provision of this Agreement that is later determined to be invalid.

23.6 Insurance No Limit. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section 23.

23.7 Reformation. As a condition to the City's executing this Agreement, SCC specifically agrees that, to the extent any provision of this Section 23 is not fully enforceable against SCC for any reason whatsoever, this Section 23 shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

24. Limitation of Liability.

24.1 Limited to Gross Negligence. The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to SCC or to its affiliates or customers for any interference with or disruption in the operations of SCC's Broadband Telecommunications Networks or the provision of services, or for any damages arising out of or materially related to SCC's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

24.2 No Liability for Agreement Enforcement. SCC also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the City because of the enforcement of this Agreement.

24.3 SCC Assumption of Risk. SCC 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.

25. Transferability of License and Agreement.

25.1 Personal to SCC. This license is personal to SCC.

25.2 Transfer to Related Entity. Notwithstanding the foregoing, SCC may transfer or assign this Agreement to any affiliate entity under 51% common corporate control, or to the surviving entity in the event of a merger or acquisition of SCC without City's prior consent. SCC shall, however, give notice to the City of any such transfer or assignment.

25.3 Transfer to Unrelated Entity. Any transfer or assignment for reasons other than provided for in Section 25.2 above shall require the City's prior, written consent, which may be withheld, conditioned, or delayed for any reason; SCC agrees that it will provide sufficient documentation about the proposed transfer or assignment to enable the City to properly evaluate the proposed transfer in a timely manner.

25.4 Transfer Conditions. In making a determination as to whether to approve a transfer or assignment, the City may consider, among other things, the following:

25.4.1 Required Application Information. The same information required on an original application for the license.

25.4.2 SCC Compliance. Whether SCC is in compliance with its license and Page City Code and if not, the proposed transferee's commitment to cure such

noncompliance.

25.4.3 Contract Impairment. Whether the proposed transfer or assignment would result in an evasion of other applicable provisions of law or impair lawful contracts.

25.4.4 Effect on City's Interests. The effect of the transfer or assignment on the City's interests.

25.5 Acceptance by Assignee. No application for a transfer of a license shall be granted unless the proposed transferee or assignee agrees in writing that it will abide by and accept all terms of this Agreement and the Page City Code, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of SCC under this Agreement for all purposes, including renewal.

25.6 Approval not Waiver. Approval of the City of a transfer or assignment of this Agreement does not constitute a waiver or release of any of the rights of the City, whether arising before or after the date of the transfer or assignment.

25.7 Transfer Remedies. When consent is required, any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this Agreement. City may, in its sole discretion and in addition to all other lawful remedies available to City under this Agreement or otherwise, and in any combination, terminate this Agreement, collect any fees owed from SCC and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive City's consent.

25.8 Transfer Fee. SCC shall pay to City in advance the sum of \$2,000 as a nonrefundable fee for legal, administrative and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer, whether or not City grants such request.

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

27. SCC's Records.

27.1 Recordkeeping. During the entire Term of this Agreement, SCC shall keep records and provide information to City regarding the following:

27.1.1 Facility Status. The status of the construction, repair, location or relocation of SCC's Facilities.

27.1.2 Broadband Telecommunications Network. Information relating to

any Broadband Telecommunication Network on portions of the route that are not exempt from a fee imposed for occupation of the ROW.

27.1.3 Obligations of Agreement. Information relating to this Agreement and/or to City's or SCC's rights or obligations under this Agreement.

27.2 Record Form. SCC shall make available to City the requested reports or records in the formats in which they are customarily prepared by SCC.

27.3 Inspection. If necessary for the City to determine SCC's compliance with the terms of this Agreement or other applicable law, SCC shall provide relevant documentation as requested by the City and respond to questions in a format and time period to be decided by the Parties based on the nature of the request. Such records shall be available to City at SCC's offices in Coconino County, Arizona or delivered electronically as may be appropriate. SCC shall also require its employees, agents, and accountants to give their cooperation and assistance in connection with City's access to such records.

27.3.1 Service Documentation. Such documentation can include information on the type of services SCC is offering its customers (but not necessarily information disclosing any particular service being provided to a specific customer) and/or the financial information used in calculating any payments or taxes due to the City under this Agreement. If SCC determines that in order to respond to City's request for documentation, it must reasonably provide Proprietary Information, SCC shall so mark such documentation as "Confidential" and state the reason it believes the information is proprietary.

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

27.3.3 Public Domain Documentation. Information that is already in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain.

27.3.4 Disclosure Required by Law. Notwithstanding any provision in this Agreement, SCC acknowledges and understands that the City is subject to the disclosure requirements of Arizona's Public Records Law (ARIZ. REV. STAT. § 39-121 *et seq.*).

27.4 Reports. Upon request and subject to any necessary confidentiality requirements, SCC shall provide to City copies of any communications and reports submitted by SCC 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 Agreement.

28. Penalties for Violation of Terms.

28.1 Cumulative Remedies. City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until SCC complies with the terms of this Agreement or the applicable law. Such remedies are cumulative and may be pursued in the alternative.

28.2 No Special Damages. Neither Party will be liable under this Agreement for lost revenues or indirect, special, incidental, consequential, exemplary, or punitive damages, even if the Party knew or should have known that such damages were possible and even if direct damages do not satisfy a remedy. This limitation will not apply to any breach of obligations related to confidentiality.

29. Liquidated Damages for Violations.

29.1 No Reduction of Indemnity or Insurance. SCC's obligation to pay liquidated damages does not in any way detract from SCC's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to SCC's obligation to pay liquidated damages.

29.2 Liquidated Damages Calculated. SCC understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of the Page City Code will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the Parties hereby agree to the liquidated damages specified below. The following amounts per day or part thereof may be chargeable to the security fund for the following concerns:

29.2.1 ROW Restoration. Each failure to properly restore the public ROW or to correct related violations of specifications, code ordinance or standards within 15 business days of having been notified by the City to correct such defects (or such longer periods as the parties agree might be reasonably necessary to make such corrections) – \$500 per day. Such amount is in addition to any cost the City may incur to restore the ROW or correct the violation.

29.2.2 Records Availability. Each failure to make SCC's books and records available as required by this Agreement and such failure continues for 15 business days after receipt of notice of failure to provide from the City – \$250 per day.

29.2.3 Unauthorized Transfer. Any unauthorized partial or total transfer of this Agreement – \$4,000 per transfer.

29.2.4 Material Action. Each material instance of any action or non-action by SCC contrary to the terms of this Agreement that is not cured after 30 days' notice (or such longer periods as the parties agree might be reasonably necessary to make such corrections) – \$500 per day.

29.2.5 Insurance Certificate. Failure to provide a valid Certificate of Insurance or endorsement as required by Section 22.1.10 that is not cured after 10 days' notice – \$50 per day.

29.3 Assessment. If the City concludes that SCC may be liable for liquidated

damages, the City shall issue to SCC a “Notice of Intention to Assess Liquidated Damages” and allow SCC an opportunity to cure in the time period specified in Sections 29.2.1 through 29.2.5. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. SCC shall pay the liquidated damage amount within 10 business days of receipt or the City shall deduct the amount from the security fund. If, however, the liquidated damages exceed \$5,000, then the following shall apply:

29.3.1 Extended Payment Period. SCC shall have 30 days of receipt of such notice to pay the liquidated damage amount or give City notice contesting the assertion of noncompliance.

29.3.2 Contest of Assessment. In the event that SCC contests the City’s assertion of violation or fails to respond to the City’s Notice of Intent to Assess Liquidated Damages, City shall schedule a hearing before a neutral hearing officer to determine whether the liquidated damages were properly assessed, and any requirement for the payment of the same shall be suspended pending final determination as set forth herein. The City shall provide SCC with at least 10 business days’ notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, SCC will be given the opportunity to be heard and present evidence. If the result of the hearing is that SCC is responsible for the liquidated damage amount, then the amount determined at the hearing will be due 10 days after the hearing decision is announced. The hearing officer’s determination shall be final and conclusive.

30. Revocation/Termination.

30.1 Early Termination. The license granted hereunder may be revoked and/or the Agreement terminated prior to its date of expiration by the City for the following reasons:

30.1.1 Material Failure. SCC fails to comply with the material terms and conditions of this Agreement or applicable law, including but not limited to failing to maintain any insurance, security fund, letter of credit, and/or a performance bond.

30.1.2 Failure to Pay. SCC fails to make payments in the amounts and at the time specified in this Agreement after a final determination that the payments were owed.

30.1.3 Cessation of Business. SCC ceases doing business in the City.

30.1.4 Map Failures. SCC fails to provide current, accurate as-built plans and maps showing the location of all Facilities installed or constructed in the City.

30.1.5 Bankruptcy. SCC is or becomes insolvent or is a party to a voluntary or involuntary 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 SCC as a going concern, or if there is any similar action that affects SCC’s capability to perform its obligations under this Agreement.

30.1.6 Lack of License. SCC fails to obtain or maintain any licenses,

permits, or other governmental approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.

30.1.7 Court Order. A court has issued an injunction that in any way prevents or restrains SCC's use of any portion of the ROW and remaining in force for a period of at least 60 consecutive days.

30.2 Cure Period. Before terminating the Agreement under Sections 30.1.1, 30.1.2, 30.1.4, or 30.1.6, the City Manager or a designee, shall give prior written notice to SCC of the defect in performance and give SCC 60 days within which to cure the defect in performance.

30.3 Cure Period Waived for Misconduct. The City need not provide a 60 day cure period prior to termination if the City reasonably determines and provides written notice to SCC that the defect in performance under the Agreement is due to intentional misconduct, is a violation of criminal law, or is a part of a pattern of repeated and persistent violations where SCC has already had notice and opportunity to cure.

30.4 Manager Authority. The City Manager has the authority to terminate Agreement, subject to SCC's right to notice and cure where provided.

30.5 Hearing Prior to Revocation of License. If requested by SCC not later than 10 days prior to end of the applicable cure period, the City will hold a hearing prior to termination of this Agreement. Such hearing will be held in the same manner as set forth in Subsection 29.3.2 above.

30.6 Termination by Mutual Agreement. This Agreement may be terminated prior to its date of expiration by SCC by providing the City with 90 days written notice and only upon making arrangements satisfactory with the City Manager to remove all SCC's Facilities from public property and the ROW except as permitted in Section 30.7 below, unless the City Manager agrees in writing to allow SCC to abandon part or all of its Facilities in place. If the City Manager agrees to allow SCC to abandon its Facilities in place, the ownership of such Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and SCC shall cooperate to execute any documents necessary to accomplish such transfer within 30 days of such allowance of abandonment.

30.7 Equipment Removal. Notwithstanding anything in Section 30.6 above, upon termination of this Agreement, SCC shall remove all of its optical repeaters, multiplexers, antennae, wires, and related equipment, but not its Ducts, Conduits, or its cable, wires or other equipment located therein, within 90 days.

31. Non-use/Abandonment of the Facilities.

31.1 Removal on Abandonment. An "Abandoned Facility" will mean a Facility no longer in service or physically disconnected from a portion of the operating Facility or from any other Facility that is in use or still carries service. If SCC ceases to provide services or abandons use of any of its Facilities, upon cancellation or termination of the Agreement, SCC shall notify the City and may, subject to the City's approval, permanently abandon the Facilities in place as described in Section 30.6 above. In such event, the City, at its option, may acquire ownership

of the Facilities. In lieu of permanent abandonment, the City may require SCC, to the reasonable satisfaction of the City and without cost or expense to the City, to promptly remove its equipment described in Section 30.7 above, and to restore the public property and ROW to a reasonable condition under the supervision of the City.

31.2 City Property. Upon permanent abandonment, if the City does not require removal, or upon removal of the equipment as provided in Section 30.7, SCC shall submit to the City a proposal and instruments for transferring ownership to the City of any equipment so abandoned or remaining following such removal. Any such Facilities, which are not removed as required by the City within 90 days of either such date of termination or cancellation or of the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. SCC will notify the Arizona Blue Stake Center to record the Facilities that have been abandoned.

31.3 Title to Property. Title to any and all personal property installed by SCC upon the ROW that is not removed during the period set forth in Section 31.2 shall automatically vest in City.

31.4 On-going Use. Nothing in Section 31.1 shall be deemed to require SCC to remove Facilities that SCC uses for the provision 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 the City pursuant to this Agreement.

32. Cancellation for Conflict of Interest. Pursuant to ARIZ. REV. STAT. § 38-511, City may cancel this Agreement within three years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement is, at any time while the Agreement or an extension of the Agreement is in effect, an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when SCC receives written notice of the cancellation, unless the notice specifies a later time.

33. Gratuities. City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a gratuity was offered or made by SCC or a representative of SCC to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by SCC.

34. Condemnation.

34.1 Generally. The following shall govern any condemnation of any part of or interest in the area used and/or occupied by SCC and any conveyance to City or another condemnor in avoidance or settlement of condemnation or a threat of condemnation:

34.1.1 Termination for Condemnation. This Agreement shall terminate as



to the portion taken on the date that is the earlier of the date title vests in the condemnor, or the date upon which the condemnor is let into possession.

34.1.2 Power to Condemn. SCC acknowledges that City and others, to the extent legally authorized, from time to time may use the power to condemn the area used by SCC or any interest therein or rights thereto.

A. City reserves the right of condemnation or eminent domain over the area used and/or occupied by SCC. City does not warrant that it will not condemn the area(s) used and/or occupied by SCC during the Term of this Agreement, but City does not presently have intentions to condemn such area(s).

B. City also reserves the right through its powers of eminent domain to acquire all or any portion of the Facilities owned by SCC in accordance with the applicable conditions set forth in the Arizona Revised Statutes. However, under no circumstances shall any valuation be made for any right or privilege granted by this Agreement should the City acquire the property of SCC.

35. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:           City of Page  
697 Vista Avenue  
Page, Arizona 86040  
  
P.O. Box 1180  
Page, Arizona 86040  
Attn: City Manager

If to SCC:                South Central Communications, Inc.  
318 N 100 E  
Kanab, UT 84741

With copy to:           Kira M. Slawson  
Blackburn & Stoll, LC  
257 East 200 South, Suite 800  
Salt Lake City, UT 84111

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the

date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

36. Governing Law. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the federal or state courts located within Coconino County, Arizona.

37. Partial Invalidity. If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable or preempted.

38. No Warranty.

38.1 As to License. The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.

38.2 As to ROW. SCC acknowledges and agrees that City does not warrant the condition or safety of its ROW or the premises surrounding the same, and, subject to the terms, conditions and limitations set forth herein, SCC hereby assumes all risks of any damage, injury or loss of any nature whatsoever caused by or in connection with the use of any City ROW.

39. Non-Waiver. Neither Party shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

40. Remedies Not Exclusive. The remedies set forth in this Agreement are not exclusive. Election of one remedy does not preclude the use of other remedies.

41. Force Majeure. With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon SCC, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, epidemic, pandemic, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by SCC and is beyond its reasonable control.

42. Dispute Resolution. In the event of a dispute between the Parties to this Agreement regarding a provision of this Agreement, a Party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the Parties will meet in good faith to attempt to resolve the dispute. If the Parties fail to resolve the dispute, then the Parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing Parties, the disputing Parties shall mutually agree upon the services of one mediator whose fees

and expenses shall be borne equally by the disputing Parties. If the dispute is not resolved within a reasonable time, the disputing Parties shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

43. Exhibits. All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement as if fully set forth herein.

44. Survival of Liability. All obligations of SCC and City hereunder and all warranties and indemnities of SCC hereunder shall survive termination of this Agreement.

45. Complete Agreement. This Agreement, including any Exhibits which are attached, are hereby incorporated into this Agreement and all of which constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral.

46. Modification or Amendment. This Agreement cannot be modified or amended except in writing signed by both Parties.

47. Israel. To the extent ARIZ. REV. STAT. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

48. Pursuant to A.R.S. §35-394, SCC certifies that it does not currently, and agrees for the duration of the Agreement that it will not, use:

- A. The forced labor of ethnic Uyghurs in the People's Republic of China.
- B. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- C. Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

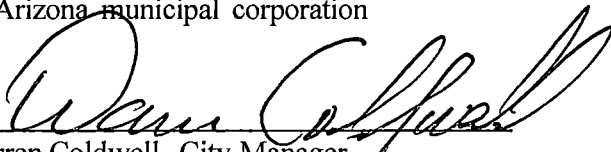
If SCC becomes aware during the Term of the Agreement that it is not in compliance with the written certification, SCC shall notify the City within five business days after becoming aware of the noncompliance. If SCC does not provide the City with a written certification that SCC has remedied the noncompliance within one hundred eighty days after notifying the City of the noncompliance, the Agreement terminates, except that If the Agreement termination date occurs before the end of the remedy period, the Agreement terminates on the Agreement termination date.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.


“City”

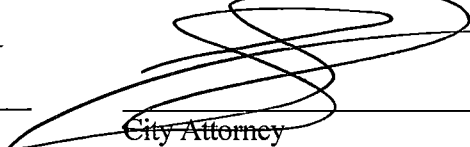
CITY OF PAGE,  
an Arizona municipal corporation

  
\_\_\_\_\_  
Darren Coldwell, City Manager

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Clerk

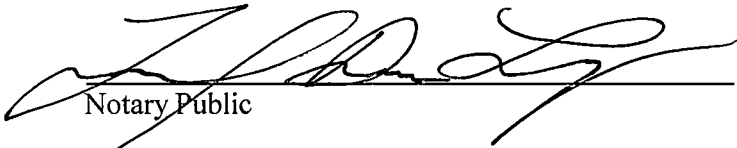
  
\_\_\_\_\_  
City Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF COCONINO    )

On August 8<sup>th</sup>, 2024, before me personally appeared Darren Coldwell, the City Manager of the CITY OF PAGE, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the City of Page.



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

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



**EXHIBIT A  
TO  
WIRED TELECOMMUNICATIONS LICENSE  
AND RIGHT-OF-WAY USE AGREEMENT  
BETWEEN THE CITY OF PAGE  
AND SOUTH CENTRAL  
COMMUNICATION, INC.**

[Map of Use Areas]

The map contained within this exhibit is considered confidential and proprietary by SCC. The map will be kept on file in the City's Public Works Department and will be released publicly only pursuant to Section 29 of this Agreement.



**EXHIBIT B  
TO  
WIRED TELECOMMUNICATIONS LICENSE  
AND RIGHT-OF-WAY USE AGREEMENT  
BETWEEN THE CITY OF PAGE  
AND SOUTH CENTRAL  
COMMUNICATION, INC.**

As set forth in Section 19 of the ROW License Agreement, SCC shall provide one dark fiber connection to the following City facilities: Golf Course Clubhouse, Golf Course Maintenance, Page Sports Complex, Community Center, and Public Works. SCC shall provide two dark fiber connections to: Pera Club.

City Facility Address	A Loc. of Fiber	Z Loc. of Fiber	Site Name	Completion Date
400 Clubhouse Dr.	814 AQUA AVE	400 Clubhouse Dr.	Golf Course Clubhouse	Within 90 days of execution of ROW License Agreement
724 US HIGHWAY 89	814 AQUA AVE	724 US HIGHWAY 89	Golf Course Maintenance	To be determined (TBD), Subject to ADOT ROW
477 Haul Road	814 AQUA AVE	477 Haul Road	Page Sports Complex	Within 90 days of execution of ROW License Agreement
699 S Navajo Drive	814 AQUA AVE	699 S Navajo Drive	Community Center	Within 90 days of execution of ROW License Agreement
1950 Industrial Dr	814 AQUA AVE	1950 Industrial Dr	Public Works	Within 90 days of execution of ROW License Agreement
445 Haul Road	814 AQUA AVE	445 Haul Road	Pera Club	Within 90 days of execution of ROW License Agreement





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/30/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

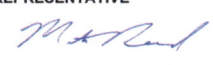
<b>PRODUCER</b> <b>UNICO Group</b> 1128 Lincoln Mall, Suite 200 Lincoln, NE, 68508	<b>CONTACT NAME:</b> Ashley Roth <b>PHONE (A/C, No, Ext):</b> (402) 434-7200 <b>E-MAIL ADDRESS:</b> aroth@unitelinsurance.com <b>FAX (A/C, No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Continental Western Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>
<b>INSURED</b> South Central Utah Telephone Association, Inc. 318 North 100 East *Mailing Address Kanab, UT, 84741	

**COVERAGES**                      **CERTIFICATE NUMBER: 1722347918553**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSP	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			RUP3302939	1/1/2024	1/1/2025	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>300,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			RUP3302939	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			RUP3302939	1/1/2024	1/1/2025	EACH OCCURRENCE \$ <b>5,000,000</b> AGGREGATE \$ <b>5,000,000</b> \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WCA3304677-20	1/1/2024	1/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows: General Liability, Auto Liability, Excess Liability on a primary and non-contributory basis. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by SCC under this Agreement.

<b>CERTIFICATE HOLDER</b> City of Page, Arizona Public Works Office Manager Tamra Tibbetts 12 Seventh Ave P.O. Box 1180 Page, AZ, 86040	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--



RIGHT OF WAY BOND

Bond No. 91BSBJF6596

KNOW ALL MEN BY THESE PRESENTS:

That, South Central Communications, Inc. hereinafter called the Principal, and Hartford Fire Insurance Company hereinafter called the Surety, are held and firmly bound unto the City of Page, Arizona, hereinafter called the Obligee, in the sum of One Hundred Thousand (\$100,000) Dollars, to the payment of which sum, well and truly to be made, the said Principal and the Surety bind themselves, their successors, heirs and assigns, jointly and severally, firmly by these presents.

WHEREAS, Right of Way bond is required of said Principal to guarantee the proper restoration and replacement of street rights-of-way in accordance with the plans and specifications of the Agreement and within the time specified for such completion, then this obligation shall be void at the expiration of the maintenance period of one (1) year; otherwise to remain in full force and effect.

Signed, sealed and dated this 18th day of June, 2024.



South Central Communications, Inc.  
Principal

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

Hartford Fire Insurance Company  
Surety

By: Thomas Champoux  
Thomas Champoux, Attorney-in-Fact

# POWER OF ATTORNEY

Direct Inquiries/Claims to:

**THE HARTFORD**  
BOND, T-11

One Hartford Plaza  
Hartford, Connecticut 06155

[Bond.Claims@thehartford.com](mailto:Bond.Claims@thehartford.com)

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: UNICO GROUP INC

Agency Code: 91-913540

- Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint Thomas Champoux

its true and lawful Attorney-in-Fact, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge the following bond, undertaking, contract or written instrument:

Bond No. 91BSBJF6596

Naming South Central Communications, Inc. as Principal,  
and City of Page, Arizona as Obligee,

in the amount of See Bond Form(s) on behalf of Company in its business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**In Witness Whereof**, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Shelby Wiggins*

Shelby Wiggins, Assistant Secretary

*Joelle LaPierre*

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA

COUNTY OF SEMINOLE

ss. Lake Mary

On this 20th day of May, 2021, before me personally came Joelle LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.



*Jessica Ciccone*

Jessica Ciccone  
My Commission HH 122280  
Expires June 20, 2025

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of June 18, 2024.

Signed and sealed in Lake Mary, Florida.



*Keith Dozois*

Keith D. Dozois, Assistant Vice President



**Date:** June 25, 2024

**Agency Code:** 91 913540

**Agency Information**

UNICO GROUP INC  
1128 LINCOLN MALL SUITE 200  
LINCOLN, NE 68508

**Obligee Information**

OBLIGEE:  
City of Page, Arizona  
697 Vista Ave  
Page, AZ 86040

**Insured / Principal:** South Central Communications, Inc.

**Policy / Bond #:** 91BSBJF6596

**Account Name/Number:** Telephone Company Program - \$17 91M100478863

**Policy Term:** July 1, 2024 - July 1, 2025

**Type of Policy:** Surety - License & Permit

**Billing Term:** Annual

**Billing Type<sup>1</sup>:** Direct Bill

**Transaction Type:** New Bond

**Transaction Effective Date:** July 1, 2024

**Bond Limit:** \$100,000

Premium
\$1,700

State Tax / Surcharge if applicable
\$ /

This record is a billing advice only.

If you have any questions regarding this transaction, please contact your agent or The Hartford's Billing Department.

**<sup>1</sup> Billing Type:**

- Agency Bill – Premium will be billed through your Agent.
- Direct Bill – You will receive a billing statement directly from The Hartford.
  - Credit Card – Premium noted on this statement has been submitted to your Credit Card for this term only and it will be reflected in your Direct Bill notification you receive from The Hartford.