#1

DEC 12 2013

ORDINANCE NO. 4514

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, GRANTING A CABLE TELEVISION LICENSE AGREEMENT BETWEEN THE CITY OF CHANDLER AND WESTERN BROADBAND, L.L.C.

A. Pursuant to federal, state and local law, including Chapter 46, Division V of the City Code, the City is authorized to grant, renew, deny and terminate Licenses for the installation, operation, and maintenance of Cable Systems and otherwise regulate Cable Services within the City boundaries by virtue of federal and state statues, by the City's police powers, by its authority over its public rights-of-way, and by other City powers and authority.

B. Licensee has obtained and operated a Cable System operated by Sun Lakes Cable, L.L.C. since October 27, 2004 for a service area solely within the boundaries of the retirement community of Sun Lakes (located in an unincorporated area of southeastern Maricopa County) and its adjacent retirement community of Sun Bird (located in Chandler).

C. The cable system, to-date, has been operating entirely within private easements which precluded the requirement for a Cable License from the City according to federal laws, however, Licensee is now in the process of a cable system upgrade which will necessitate the use of City rights-of-way which triggers a requirement to obtain a Cable License from the City.

D. The City has reviewed the Licensee, Licensee's record of service, Licensee's Facilities, the cable-related community needs of the City, Licensee's ability to carry out its commitments and the Licensee's qualifications to hold a license from the City.

E. Based on such review, the City hereby finds that it would serve the public interest to grant a license on the terms and conditions hereinafter set forth, and Licensee agrees to obtain a license under these conditions.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AS FOLLOWS:

Section 1: The Mayor and the City of Chandler City Council hereby approves Exhibit A-the Cable Television License Agreement between the City of Chandler and Western Broadband, L.L.C., a Delaware Limited Liability Company.

Section 2: That the Mayor is authorized to execute this Agreement and establish a Class 6 Cable Television and Related Services License as applicable and to establish Fees.

Section 3: That all officers and employees of the City of Chandler shall perform all administrative and ministerial acts to carry out the authorization set forth in this Ordinance.

Section 4: This Ordinance shall become effective thirty days from and after its final adoption: provided, however, that the agreement hereby granted shall not become effective unless and until

Licensee has accepted said agreement as provided herein and has carried out such other terms and conditions as may be required before said agreement shall become effective.

INTRODUCED AND TENTATIVELY ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this ___ day of _____, 2013.

ATTEST: MAYOR:

_____ _____

CITY CLERK JAY TIBSHRAENY

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2013.

ATTEST: MAYOR

_____ _____

CITY CLERK JAY TIBSHRAENY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4514 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the ____ day of _____, 2013 and that a quorum was present thereat.

_____

CITY CLERK

Published:

APPROVED AS TO FORM:

_____

CITY ATTORNEY CH for

ATTACHMENT A

CABLE TELEVISION LICENSE AGREEMENT

This Cable Television License Agreement (the "Agreement" or "License"), is made, dated, and entered into this ____ day of _____, 2013 (the "Effective Date") by and between the City of Chandler (the "City") and Western Broadband, L.L.C. ("Licensee"), a Delaware limited liability company.

RECITALS

A. Pursuant to federal, state and local law, including Chapter 46, Division V of the City Code, the City is authorized to grant, renew, deny and terminate Licenses for the installation, operation, and maintenance of Cable Systems and otherwise regulate Cable Services within the City boundaries by virtue of federal and state statues, by the City's police powers, by its authority over its public rights-of-way, and by other City powers and authority.

B. Licensee has obtained and operated a Cable System operated by Sun Lakes Cable, L.L.C. since October 27, 2004 for a service area solely within the boundaries of the retirement community of Sun Lakes (located in an unincorporated area of southeastern Maricopa County) and its adjacent retirement community of Sun Bird (located in Chandler).

C. The cable system, to-date, has been operating entirely within private easements which precluded the requirement for a Cable License from the City according to federal laws, however, Licensee is now in the process of a cable system upgrade which will necessitate the use of City rights-of-way which triggers a requirement to obtain a Cable License from the City.

D. The City has reviewed the Licensee, Licensee's record of service, Licensee's Facilities, the cable-related community needs of the City, Licensee's ability to carry out its commitments and the Licensee's qualifications to hold a license from the City.

E. Based on such review, the City hereby finds that it would serve the public interest to grant a license on the terms and conditions hereinafter set forth, and Licensee agrees to obtain a license under these conditions.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

1. Definitions. The definitions set forth in Chapter 46 of the Chandler City Code are applicable to this Agreement.

2. Grant of Authority:

2.1. The City hereby grants to Licensee the right and authority to operate a Cable System in the City's Streets and Public Ways located within the geographic area detailed in Exhibit A which represents the community commonly referred to as Sun Bird, Chandler, Arizona. Licensee is the sole operator of a Cable System in this area.

2.2. It is recognized that the majority of the activity related to the operation of this Cable System takes place in private streets and private easements. The construction provisions of this License apply to that portion of the activity occurring on public property and right-of-way.

2.3. This License is for the purpose to erect, install, solicit, construct, operate, repair, replace, rebuild, reconstruct, maintain, and retain in, on , over, upon, across and along any Streets and Public Ways such poles, wires, cable fiber optics, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units, and other property or equipment as may be necessary or appurtenant to the Cable System; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other Persons, including but not limited to any public utility or other entity licensed or permitted to do business in the City. Pursuant to provisions of the Chandler City Code and this Agreement, it is understood that Licensee will be using existing overhead Salt River Project telecommunication fiber lines. This Agreement does not authorize the use of any future overhead infrastructure, whether strung by Licensee, the Salt River Project or by any other third party for the use of this Licensee pursuant to this Agreement.

2.4. This License is subject to the provisions of Chapter 46 of the Chandler City Code. Licensee is required to comply with all the provisions of Division V, Cable Television in conjunction with this Agreement. Nothing in this Licensee Agreement shall require Licensee to obtain a Fiber Optic License in connection with Facilities of its Cable System.

2.5. Competitive Parity. If Licensee desires to construct and or operate a Cable system in the City that extends outside the geographic area detailed in Section 2.1 and/or that is served by another company that holds a Cable License with the City, then Licensee must apply to the City for either an amendment to this License or a new License Agreement, depending on the specifics of the application, which will take into consideration parity requirements for any competing Cable companies.

2.6. Term. This grant of authority runs for a term of fifteen (15) years, effective the day of the executed Agreement.

3. Fees and Payments.

3.1. Licensee shall pay a one-time application fee of $10,000 upon application for this Agreement. In accordance with Section 46-8.8(E) of the City Code, the application fee shall be offset by future license fees paid to the City.

3.2. Licensee shall pay to the City a License Fee in an amount equal to five percent (5%) of Licensee's Gross Revenues during the term of this License, for those revenues associated with the service area depicted in Exhibit A.

3.3. Licensee is entitled to reductions in payments of License Fees as provided in Section 46-8.8C and Title 9 of the Arizona Revised Statutes, as amended from time to time.

3.4. Payment of the License Fee shall be made quarterly.

4. Public, Education, and Government (PEG) channels. The requirements of Section 46-8.9 of the City Code will be met by the Licensee providing the City, at no cost, the broadcasting of PEG programming as agreed upon by Licensee and the City's Communication and Public Affairs (CAPA) Director. Licensee will make its best effort to comply with City programming requests.

5. Customer Service Standards. 1) The requirements of Section 46.8.11(B) of the City Code will be met by the Licensee operating its normal business hours of a minimum forty (40) hours a week Monday through Friday and maintaining its Internet technical support operations 24 hours a day, 7 days a week. The local business office requirement will be satisfied by a location within 25 miles of the Sun Lakes Community. 2) Section 46-8.10 (A) of the City Code will not be fully required until Licensee's Sun Bird subscribers base reaches one thousand (1,000) or, if the number of service quality complaints the City receives from its subscribers base, which remain unresolved for more than thirty (30) days, exceeds two (2) percent of its subscribers base for any six (6) consecutive months or, five (5) years from contract inception, whichever comes first. Instead, Licensee shall provide the City those statistics itemized in section 46-8.10 (A) that it currently collects on a monthly basis.

6. Construction Requirements and Technical Standards. Licensee shall construct, install, operate, and maintain its System in a manner such that it operates at all times consistent with all laws, the construction standards of the City, and the FCC Rules and Regulations, Part 76 SubPart K (Technical Standards), as amended from time to time. Licensee shall place all new facilities underground, provided however, that that the City agrees that Licensee's efforts to rebuild, reconstruct, or replace to its existing overhead Salt River Project telecommunication fiber lines and Facilities shall not be considered new facilities as that phrase is used under this provision. No underground facilities may be moved to poles. Licensee may not install any poles. Section 46.8-12 (Construction Standards) applies to activity in the geographic area shown in Exhibit A only.

7. Insurance. Licensee shall maintain in full force and effect, at no cost and expense to the City, during the term of this License, commercial general liability insurance in the amount of five

million dollars combined single limit for bodily injury and property damage. The City shall be designated as an additional insured. Such insurance will not be cancelable except upon thirty (30) Days prior written notice to the City. Upon written request, Licensee shall provide a certificate of insurance showing evidence of the coverage required by this Section. Licensee may self-insure the above-described policy coverages if Licensee or its parent is of sufficient financial standing to provide such insurance.

8. Letter of Credit.

8.1. Amount; Purpose. Within thirty (30) Days after the effective date of this License, Licensee shall deposit with the City an irrevocable letter of credit in an amount not to exceed five thousand dollars ($5,000) (replenishable as specified in Section 8.3 below) issued by a federally insured commercial lending institution. The form and substance of said letter of credit will be used to assure (a) the faithful performance by Licensee of all provisions of this License; (b) compliance with all orders, permits, and directions of any Department of the City having jurisdiction over Licensee's acts or defaults under this License; and (c) Licensee's payment of any penalties, liquidated damages, claims, liens, and taxes due to the City that arise by reason of the construction, operation, or maintenance of the Cable System, including cost of removal or abandonment of any of Licensee's property.

8.2. Drawing on Letter of Credit. The letter of credit may be drawn upon by the City by presentation of a draft on sight at the lending institution, accompanied by a written certificate signed by the City Manager certifying that Licensee has been found, pursuant to Section 46-8.14 of the Chandler City Code to have failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this License or authorized by law, and no action proceeding against a letter of credit will affect any other right the City may have.

8.3. Replenishing. The letter of credit shall be structured in such a manner so that if the City at any time draws upon the letter of credit, Licensee shall within ten (10) business days after receipt of written notice from the issuing lending institution of the amount of the withdrawal of funds by the City under the letter of credit, Licensee shall immediately increase the amount of available credit by the amount necessary to replenish that portion of the available credit exhausted by the honoring of the City's draft; provided, however the maximum amount available to be drawn on this letter of credit for any one event shall not exceed ten thousand dollars ($10,000). The intent of this Section is to make available to the City at all times a letter of credit in the amount of ten thousand dollars ($10,000)

9. Liquidated Damages.

9.1. Licensee understands and agrees that failure to comply with any time and performance requirements as stipulated in this License Agreement or in Chapter 46 of the Chandler 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 set forth below. The following amounts per day will be chargeable to the Licensee under its Letter of Credit for the following actions or non-actions:

a) Failure to Complete System Construction or reconstruction in accordance with these Licensing Requirements and/or the License, unless the City Council specifically approves the delay by motion or resolution – five hundred dollars ($500) a day;
b) Failure to provide a cable connection within the time(s) set forth in Chapter 46 of the Chandler City Code and/or this Licensing Agreement – fifty dollars ($50) a day;
c) Failure to properly restore the public Right-of-Way or to correct related violations of specifications, code, or standards after having been notified by the City to correct such defects – six hundred dollars ($600) a day;
d) Failure to comply with Subscriber service standards of these Licensing Requirements – one hundred fifty dollars ($150) a day;
e) Failure to test, analyze and report on the performance of the Cable System following a written request – one hundred fifty dollars ($150) a day;
f) Failure to provide in a continuing manner the type of services proposed in the accepted Application, renewal Proposal, or License, unless the City Council specifically approves modification of a Licensee's obligation – five hundred dollars ($500) a day;
g) Failure to cure any violation of Customer Service Standards in Chapter 46 of the Chandler City Code, following notice and an opportunity to cure pursuant to the provisions of that Section -- one hundred fifty dollars ($150) a day; and
h) Any other material action or non-action by the Licensee, as agreed upon between the City and Licensee, and set forth in the License -- one hundred fifty dollars ($150) a day.

9.2 In the event that the City believes that Licensee has not complied with the terms of this License, the City shall informally discuss the matter with Licensee. If these discussions do not lead to resolution of the issue, the City shall notify Licensee in writing of the exact nature of the alleged noncompliance. Licensee shall have thirty (30) days from receipt of the notice of violation: (a) to respond to the City, contesting the assertion of noncompliance; (b) to cure such default; or (c) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. If the parties fail to reach resolution, the provisions of Section 14-8.16B shall apply.

10. Continuity of Service. It is the right of all Subscribers to continue receiving Cable Service as long as their financial and other obligations to Licensee are honored. If this License expires

or terminates, Licensee shall cooperate with the City to ensure continuity of Cable Service to all Subscribers for a period not to exceed ninety (90) Days. Said period may be extended by written agreement between the City and Licensee. During such period, Licensee shall be entitled to the revenues for operating the Cable System.

11. Other Services. Upon expiration, revocation, or termination of this License for any reason, Licensee shall have one hundred eighty (180) Days from the date of expiration, revocation, or termination to enter into good faith negotiations with the City or other governmental authority to obtain a license, permit, or other approval or agreement that may then lawfully be required in order to allow Licensee to continue using Licensee's Facilities in the Streets and Public Ways for any lawful service other than Cable Service that Licensee may then provide over its Facilities in the License Area.

12. Holding Over. In any circumstance whereby Licensee would continue to occupy the Streets and Public Ways after the expiration of this Agreement, such holding over shall be deemed to operate as a renewal or extension of this Agreement on a month-to-month basis that may be terminated at any time by the City upon sixty (60) Days' written notice to Licensee, or by Licensee upon sixty (60) Days' written notice to the City.

13. Transfers:

    13.1. Prior Consent. Except as otherwise provided in Section 46-8.5 of the City Code, Licensee's right, title, or interest in this License may not be sold, transferred, assigned, or otherwise encumbered.

    13.2. Grant, Rent, or Lease. As long as a grant, rent, or lease of all or a portion of the Cable System does not amount to a transfer, Licensee in the normal course of providing Cable Services or other telecommunication services may grant, rent, or lease use of the Cable System to other Persons. Any such use shall be restricted to and consistent with such uses as Licensee is authorized in this License or under other applicable law. Any such use shall be in compliance with applicable federal and state law. No such grant, lease, or rent by Licensee will, however, relieve Licensee of any requirement or obligation under this License as to its use of the Streets and Public Ways. The City shall be notified of any such grant, rental, or lease if the use of the portion of the Cable System is or will be for Cable Services or for any activity for which a license fee is applicable.

14. Controlling Authorities.

    14.1. City Ordinances. Licensee agrees to comply with the terms of any lawfully adopted generally applicable City ordinance, to the extent that the provisions of the ordinance

do not have the effect of limiting the benefits or expanding the obligations placed upon Licensee that are contained in this License. In the event of a conflict between any ordinance or City Code provision and this License, this License shall control.

14.2. Federal and State Laws. This License is subject to and shall be governed by all requirements of the Cable Act; Arizona Revised Statutes Sections 9-505 through 9-510, as amended from time to time; and other federal and state laws and regulations governing cable communications. In a conflict between the terms and conditions of this License and the terms and conditions on which the City can grant a license, federal and state law shall control.

15. Conflict of Interest. Licensee acknowledges that this License is subject to A.R.S. § 38-511.

16. General Provisions:

16.1. Filings. When not otherwise prescribed herein, all matters that this License requires to be filed with the City shall be filed with the office of the City Clerk.

16.2. Force Majeure.

16.2.1. Licensee shall not be held in default under, or in noncompliance with, the provisions of this License, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of this License) where such alleged noncompliance or default occurred or was caused by an act of God, an act or omission of governmental military or civilian authority, strike or lockout, riot, epidemic or quarantine, war, earthquake, fire, flood, tidal wave, unusually severe rain, wind, or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, terrorist acts, governmental, administrative or judicial order or regulation or other circumstances that could not have been avoided through Licensee's exercise of reasonable care, prudence and diligence. This provision includes work delays caused by waiting for utility providers to service or monitor their own above-ground or underground facilities to which Licensee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

16.2.2. Furthermore, the parties hereby agree that it is not the City's intention to subject Licensee to penalties, fines, forfeitures, or revocation of the License for so-called "technical" breach(es) or violation(s) of this License, which include but are not limited to the following: (i) in instances or for matters where a violation

or a breach by Licensee of the License was good faith error that resulted in no or minimal negative impact on the Subscribers within the License Area or (ii) where strict performance with the terms of the License would result in practical difficulties and hardship to Licensee that outweigh the benefit to be derived by the City and/or Subscribers.

17. Governing Law; Venue. The provisions of this License are subject to applicable federal law, including but not limited to the Cable Act and the rules, regulations, and orders of the FCC, and are also subject to Arizona law not in conflict with such federal law. Proper venue is in the Superior Court of Maricopa County or the United States District Court for the District of Arizona.

18. Amendments. This License may be modified or amended only through a written Amendment executed by authorized persons for both parties. Any such changes, including unauthorized written amendments, shall be void and without effect.

19. Severability. If any Section, sentence, paragraph, term, or provision of this License or any ordinance, regulation, law, or document incorporated herein by reference is held to be illegal, invalid, unconstitutional, or unenforceable, by the decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions hereof all of which shall remain in full force and effect for the term of this License.

20. Notice. Unless otherwise provided for in this License, all notices to be given hereunder shall be given in writing and may be hand delivered or given by certified first class mail, postage prepaid addressed to the parties at the addresses set forth below. Such notices will be deemed served and effective when delivered to the designated persons listed below during ordinary business hours or on the date of delivery by U.S. Mail registered or certified return receipt requested.

To Licensee:

Western Broadband
9666 East Riggs Road, Suite 108
Sun Lakes, AZ 85248
Attn: President/CEO

To the City:

City of Chandler
Mail Stop 403
PO Box 4008
Chandler, Arizona 85244-4008
Attn: Regulatory Affairs Manager

With a copy, which is not notice, to: City of Chandler
Mail Stop 602
PO Box 4008
Chandler, Arizona 85244-4008
Attn: City Attorney

Licensee and the City are required to notify the other party of any changes to the foregoing information within fifteen (15) days of any change.

21. Headings. The headings contained herein are intended solely to facilitate the reading thereof. Such headings shall not affect the meaning or interpretation of the text herein.

22. Integration; Acquired Licenses. This License constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, drafts, discussion outlines, correspondence, memoranda, or otherwise regarding the subject matter hereof. This License hereby preempts and cancels any other license agreements granted by the City that are acquired by Licensee through the purchase or acquisition of other Cable Systems and/or cable operators. Upon completion of an acquisition the terms of this License shall govern Licensee's newly acquired Cable System(s) or cable operation(s).

IN WITNESS WHEREOF, the parties have executed this License as of the day and year first written above.

CITY OF CHANDLER

By:_____
Jay Tibshraeny, Mayor

ATTEST:

_____
Marla Paddock, City Clerk

WESTERN BROADBAND, L.L.C.,
a Delaware limited liability company

By:_____
John Schurz, President, General Manager

ATTEST:

_____
Signature

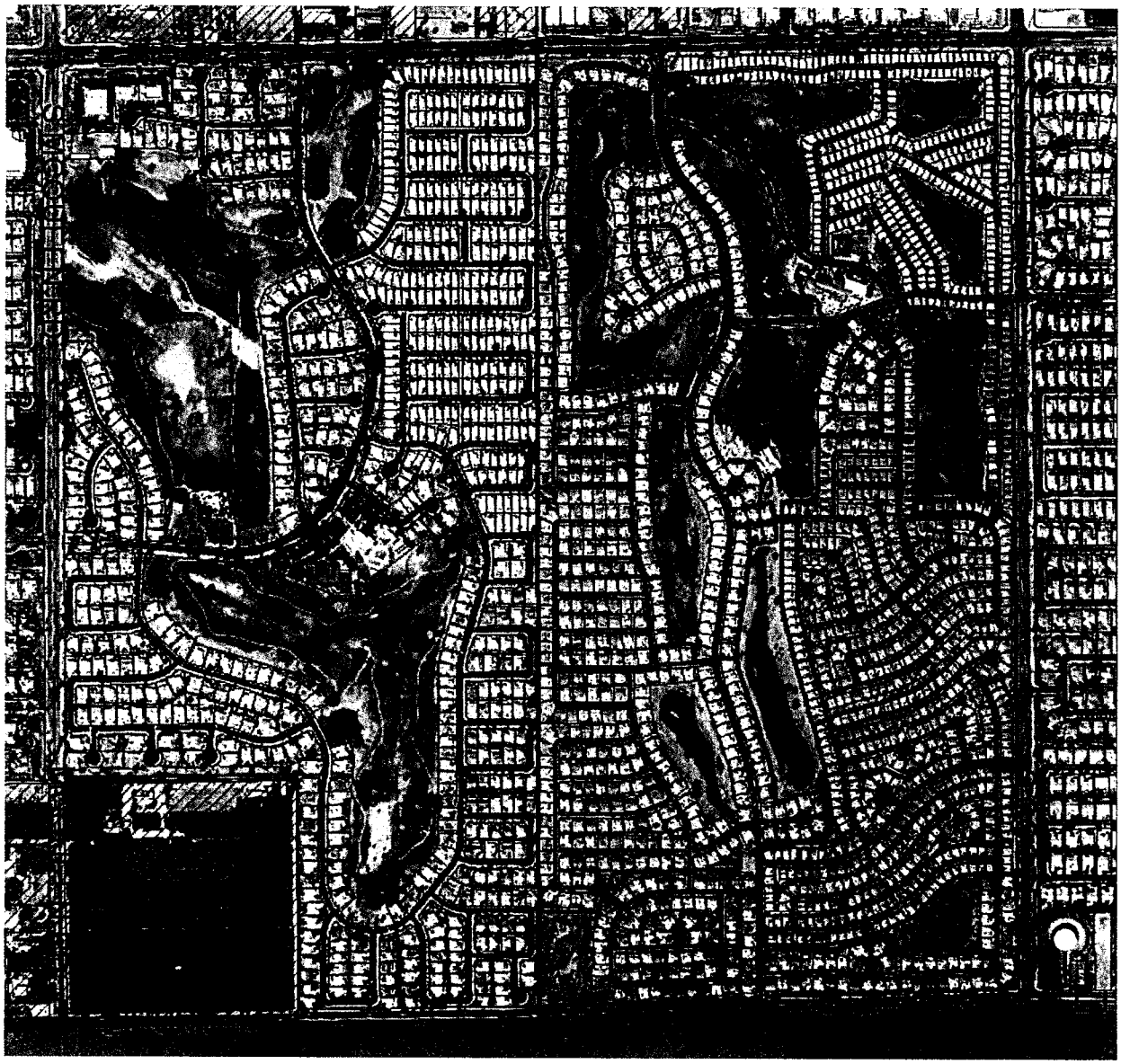
JERRY R. SCULLAWL
Print Name

VP OF ENGINEERING
Title

APPROVED AS TO FORM:

_____
Kay Bigelow, Acting City Attorney CH for

Exhibit A
Service area-Sunbird Community



Area Outlined in Bold denotes the Sunbird Area, bounded by Hunt Highway, Cooper Road, Riggs Road and Championship Drive.

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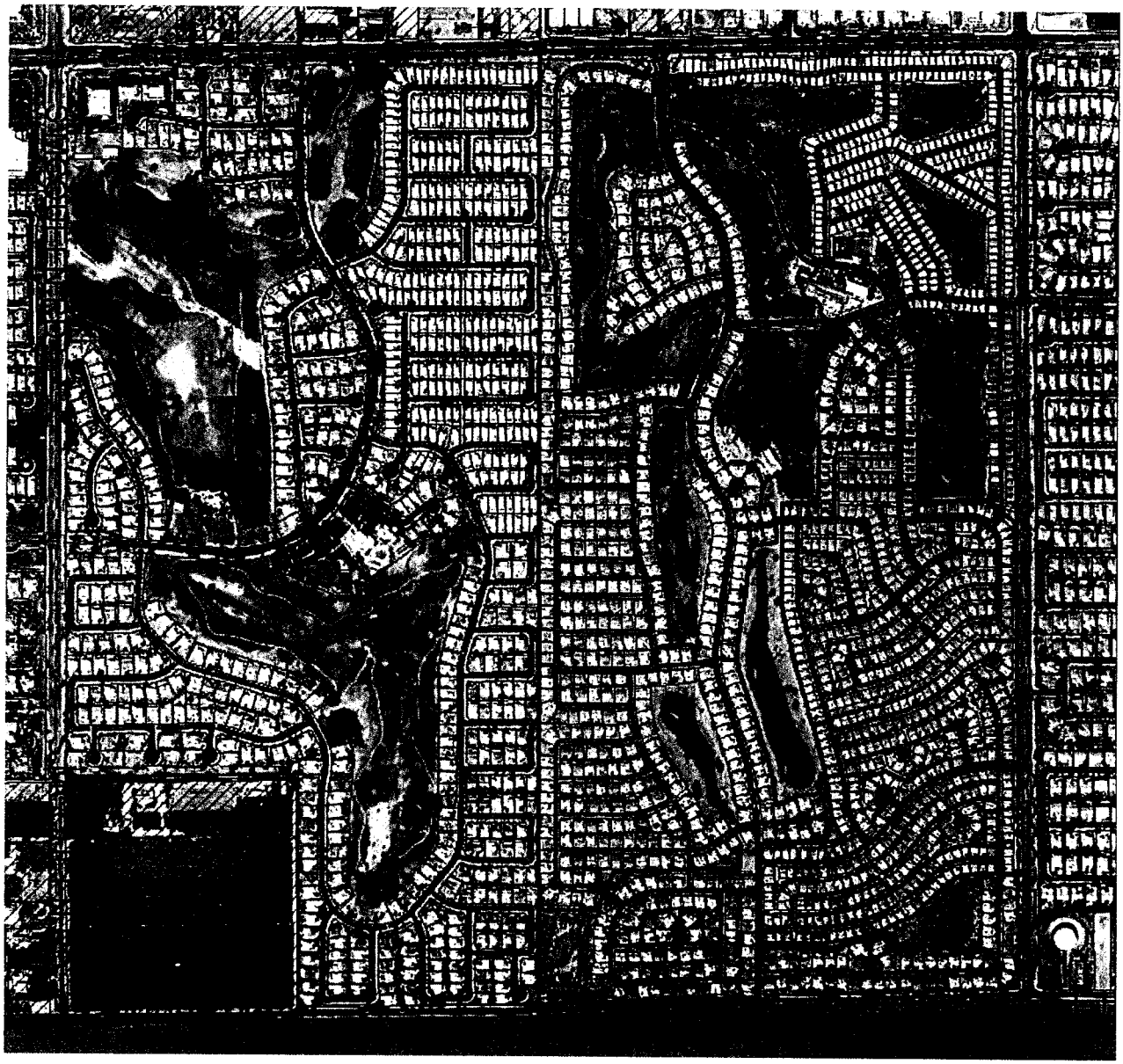
Exhibit A
Service area-Sunbird Community



Area Outlined in Red denotes the Sunbird Area, bounded by Hunt Highway, Cooper Road, Riggs Road and Championship Drive.