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MAY 8 2014

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MEMORANDUM **TRANSPORTATION & DEVELOPMENT DEPARTMENT MEMO TDA14-101**

DATE: MAY 8, 2014

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER RD
MARSHA REED, ASSISTANT CITY MANAGER MR
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR

FROM: MARGARET COULTER, REGULATORY AFFAIRS MANAGER MC

SUBJECT: INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4540 AUTHORIZING AN AGREEMENT BETWEEN TW TELECOM OF ARIZONA LLC AND THE CITY OF CHANDLER FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES TO ESTABLISH A CLASS 4 AND 5 COMMUNICATION SYSTEM

RECOMMENDATION: Staff recommends introduction and tentative adoption of Ordinance No. 4540 authorizing an Agreement between tw telecom of Arizona llc and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to Establish a Class 4 and 5 Communication System.

BACKGROUND: On September 25, 2008, City Council authorized a five-year agreement with tw telecom of Arizona llc to install, operate, and maintain a fiber communications system that provides both telecommunications and possibly non-telecommunications services. Ordinance No. 4540 renews that agreement by updating terms and fees for both service deliveries and sets provisions for automatic renewals for additional five-year terms upon mutual consent. The company holds similar agreements in other Valley cities to provide such services.

FINANCIAL IMPLICATIONS: The City has received a $3,000 application fee, which should cover the City's cost for the processing of this application, and 2.75% privilege tax will be paid on any non-interstate telecommunication services. As dictated by federal and state law, there will be no right-of-way use fee for the defined telecommunications portions of the System and its operation, but there is a fee structure established in the Agreement for any services that are not exempted by federal or state law. The company will also pay permit, inspection, and pavement damage fees.

PROPOSED MOTION: Move City Council introduce and tentatively adopt Ordinance No. 4540 authorizing the Mayor to execute and approve an Agreement between tw telecom of Arizona llc and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to Establish a Class 4 and 5 Communication System.

Attachments: Ordinance No. 4540; Attachment A-Agreement between tw telecom of Arizona llc and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to Establish a Class 4 and 5 Communication System.

ORDINANCE NO. 4540

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING THE RENEWAL OF AN AGREEMENT BETWEEN TW TELECOM OF ARIZONA LLC AND THE CITY OF CHANDLER FOR THE USE OF CITY RIGHT-OF-WAY AND PUBLIC PLACES TO ESTABLISH A COMMUNICATION SYSTEM

WHEREAS, the Chandler City Council has determined that it is in the best interest of, and consistent with, the convenience and necessity of the City of Chandler to grant such authorization to companies desiring to provide communications infrastructure within the City of Chandler; and

WHEREAS, tw telecom of arizona llc has negotiated with the City of Chandler to enter into a renewal Agreement to place communication infrastructure in City of Chandler right-of-way for its use as detailed in the Agreement; and

WHEREAS, the City Council has reviewed the terms and conditions of the Agreement with tw telecom of arizona llc and believes it to be in the best interests of the citizens of the City of Chandler;

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

SECTION I: The Mayor and the City of Chandler City Council hereby approves Attachment A-AGREEMENT BETWEEN TW TELECOM OF ARIZONA LLC AND THE CITY OF CHANDLER FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES TO ESTABLISH A CLASS 4 AND 5 COMMUNICATION SYSTEM

SECTION II: That the various City officers and employees be and they are hereby authorized and directed to perform all acts necessary to give effect to this Ordinance.

SECTION III: 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 tw telecom of arizona llc 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 _____, 2014.

ATTEST: MAYOR:

_____ _____

City Clerk

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____day of _____, 2014.

ATTEST: MAYOR

_____ _____

City Clerk

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4540 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the ____ day of _____, 2014 and that a quorum was present thereat.

_____

City Clerk

Published:

APPROVED AS TO FORM:

_____

City Attorney

Attachment A

AGREEMENT BETWEEN TW TELECOM OF ARIZONA LLC AND THE CITY OF CHANDLER FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES TO ESTABLISH A CLASS 4 AND 5 COMMUNICATION SYSTEM

This Agreement for the Use of Public Property (hereinafter "Agreement") is entered into this day of _____, 2014, by and between the City of Chandler, Arizona, a political subdivision of the State of Arizona (hereinafter "CITY" or "City of Chandler"), and tw telecom of arizona llc, a Delaware limited liability company (hereinafter "COMPANY").

RECITALS

WHEREAS, COMPANY is a provider of communications, including without limitation local telephone and high-speed data services.

AGREEMENT

SECTION 1. PERMISSION GRANTED

1.1 Definitions. The terms, phrases, words and their derivatives used in this Agreement shall have the meanings given in Chapter 46 of the Chandler City Code as amended. Additional definitions for this Agreement include:

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.

Common carrier means a private company offering interstate and international communication services by wire or radio or the interstate or foreign transmission of energy to the general public on a non-discriminatory basis.

Conduit means a pipe of either metal, ceramic or plastic that is designed to protect buried cables.

Dark fiber means fiber optic cable that is in place but not in active use. Without the associated electronic equipment needed at both ends of the cable, the fiber remains "unlit" and inactive.

Information Service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.

IntraLATA Call refers to a telephone call within the same LATA (same region). IntraLATA is local telephone service. InterLATA refers to a call from one LATA to another, which can be within a state or from state to state (interstate).

Lit Fiber Service is a telecommunications service which is furnishing the optical transmission, conveyance or routing of voice, image, data, audio, video or any other information or signals by means of a fiber optic cable.

System means Company's infrastructure and communications facilities installed in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property, including but not limited to conduit, fiber optic cables, splice cases, manholes, hand holes, and related and associated facilities.

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. However, the term does not include commercial mobile radio services, pay phone services, interstate services, cable services, information services, or the leasing of dark fiber for transmission purposes.

Telecommunications Services means the offering of telecommunications for a fee directly to the public regardless of the facilities used.

1.2. Grant. Subject to the provisions of this Agreement, the Chandler City Code, the Chandler City Charter, and Arizona and federal law, CITY grants to COMPANY nonexclusive and revocable rights and nonexclusive and revocable privileges as set forth in this Agreement to construct, install, operate, and maintain its System in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property subject to mutually agreed upon terms and conditions at a time in the future when COMPANY submits applications for Encroachment Permits.

1.2.1 At any time during the term of this Agreement, COMPANY may apply to the CITY for Encroachment Permits which will set forth the specific location of COMPANY's System, fees, if any, for that location and other terms and conditions. CITY will approve, deny or conditionally approve, on a non-discriminatory basis, such applications based on the availability of space at the location sought by COMPANY, safety and other considerations in accordance with the City Code, applicable Rights-of-Way construction regulations and other applicable law.

1.2.2 Subject to obtaining the permission of the affected property owner, this Agreement also authorizes COMPANY to place its System on property owned by third parties, such as an electric utility company or other private property owners, provided, however, the System installed or constructed by COMPANY shall meet conditions set by applicable Rights-of-Way Construction regulations, and be placed underground in accordance with Section 47-4 of the Chandler City Code. Upon request from the City, COMPANY shall promptly furnish to CITY documentation of such permission from such other affected property owner. By executing this

Agreement, CITY does not waive any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the CITY for such uses of their property or facilities, or that revenues received by any public utility or other property owner from COMPANY, by virtue of COMPANY use of their property or facilities be included in the computation of the use Agreement fees owed by such parties to CITY. Nothing contained in this paragraph or in this Agreement shall authorize COMPANY to enter into an Agreement with any third party that result in aerial overlash of existing plant whether owned or leased from a third party. Attachment is authorized only when it can be accomplished through existing infrastructure and requires no aerial overlash of existing infrastructure.

1.2.3 No component or part of COMPANY System shall be installed, constructed, located on, or attached to any property within the CITY until COMPANY has applied for and received approval for Encroachment Permits pursuant to Chapter 46 of the Chandler City Code. Additionally, COMPANY shall comply with all other provisions of the Chandler City Code, including but not limited to Chapter 35 regarding zoning, Chapter 47 regarding off-site construction and other applicable City regulations. No attachment to existing infrastructure is allowed if attachment will require aerial overlashing.

1.2.4 Any right or privilege claimed pursuant to this Agreement by COMPANY for any use in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the CITY or any other governmental entity and shall be subordinate to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

1.2.5 Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its facilities on the Right-of-Way, and for any or more of such purposes or any other lawful purpose requiring COMPANY, at the COMPANY's expense and no expense to the City, to remove, relocate or abandon in place COMPANY's Facilities in order to accommodate the activities of the City. The City shall not be liable for lost revenues sustained by COMPANY, however caused, because any activity of the City in the Right-of-Way, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and any other lawful activity on Right-of-Way, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.

1.3 <u>Description of the Services, System and its Construction.</u>

1.3.1 COMPANY uses its System to provide telecommunications and communications services, including Ethernet and transport data networking, enterprise data and voice services, high speed internet and virtual private networks. It does not provide services

that are considered Multichannel Video Programming Services, video services provided by an Open Video System or Cable Television Services.

1.3.2 COMPANY's Certificate of Convenience and Necessity ("CC&N") authorizes it to provide intrastate competitive telecommunications services, including local exchange services and intraLATA toll services.

1.3.3 COMPANY may have empty conduit and dark fiber customers within its routes in CITY.

1.3.4 COMPANY shall seek proper authority through the encroachment permit process before any construction in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property.

1.3.5 COMPANY's method of construction shall be underground construction by trenching or boring conduit along with surface mounted hand holes for access to the fiber for splicing. Company will lease fiber as deemed necessary from other fiber providers and build off of their access points, allowing for service provision to business customers. This license will permit construction by the Company within the CITY's public right-of-way and it is the intent of the parties that COMPANY AND CITY will work to minimize the inconvenience to the citizens of Chandler and others who use the arterial streets. Prior to commencement of installation of the System, Company shall submit specifications for proposed manholes and pull boxes to the City for approval, which approval shall not be unreasonably delayed or withheld. All work on the System will be performed substantially in compliance with all lawful and reasonable Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the City supplements to MAG and all lawful and reasonable requirements of the City Utility manual and will follow good practices for the industry.

Per City specifications, all conduits will be placed outside of the City of Chandler's Rights of Way ("ROW") and on other Public Property wherever possible. Company will, nonetheless, build the System in accordance with plans approved by the City of Chandler.

1.3.6 If COMPANY desires to change the components of any of the System, written approval of such change must be obtained from a representative of the City Engineer, which approval shall not be unreasonably withheld or delayed. Prior to commencement of installation of the System, Company shall submit specifications for proposed manholes and pull-boxes to the City for approval, which approval shall not be unreasonably delayed or withheld. All work on the System will be performed substantially in compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the City supplements to MAG and the City Utility manual, and will follow good practices for the industry.

1.3.7 COMPANY shall retain an independent testing company for any applicable MAG test as requested by City, subject to approval by CITY in its reasonable discretion, to test all materials outlined by MAG and the CITY'S supplements to MAG that will be used in construction of the System. The testing results will be sent to CITY directly and (three) 3 business days of obtaining results.

1.3.8 COMPANY's installation of the System shall be reasonably coordinated with other utilities and CITY to accommodate opportunities for common installation along with COMPANY's project as set forth in this Agreement. All installations shall be underground and in conduit as reasonably approved by the City Engineer. Provided, however, nothing herein shall require COMPANY to incur any material additional expense to accommodate common installations. The provisions relating to material additional expense in the foregoing sentence relate only to coordinated installations and are not applicable to any other section of this contract.

1.4 Location of the System.

1.4.1 At the time of proposed construction, COMPANY shall submit an Encroachment Permit Application(s) 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 including the installation, operation, maintenance, and location of any and all of the System. The proposed locations of COMPANY's planned initial installation of its System including related facilities or equipment is depicted on the map attached and made a part of this Agreement as Exhibit A ("Initial Routes") and shall be depicted more specifically on engineering drawings provided to the CITY with the submittal of the plans and specifications during the permitting process. If COMPANY desires to change the location of any of the System, including any related facilities or equipment, from that set forth in the initial Encroachment Permit Application(s), COMPANY shall apply for and obtain approval for an amendment to the Encroachment Permit prior to installation or construction. Such Encroachment Permit(s) shall be identified by CITY log number and made a part hereof and referenced as a summary of its System location as Exhibit A and updated yearly.

1.4.2 Although the exact placement and location of COMPANY's System shall be determined by CITY through the Encroachment Permit process, COMPANY has expressed its intent and CITY has expressed its desire to have the System installed outside of the paved street areas whenever such location is feasible and reasonable. Further, it is the intent and desire of both parties that when it is necessary for the System to intersect CITY streets or be placed under paved areas, COMPANY shall use directional boring unless a deviation is authorized by the City Engineer.

1.4.3 If COMPANY desires to change the location of any of the System, including any related facilities or equipment, from that set forth in the initial Encroachment Permit

Application(s), COMPANY shall apply for and obtain approval for an amendment to the Encroachment Permit prior to installation and construction.

SECTION 2. SCOPE

2.1 Licensing Requirements.

This Agreement satisfies the licensing requirements of and is in accordance with the provisions of Chapter 46 of the Chandler City Code.

2.2 Use of COMPANY's Facilities by Others.

This Agreement authorizes COMPANY, in its ordinary course of business (i) to lease to or contract with others for use of all or part of the System, except to aerial overlash, attach to poles and/or store aerial fiber for purposes of leasing or contracting with others for use of all or part of the system, and (ii) to sell dark fibers, conduit, or any other facilities that are parts of the System to others that have contracts, franchises or other agreements with the CITY to use Rights of Way ("ROW") and on other City of Chandler Public Property within CITY, without further prior consent of CITY, but only on the following conditions:

2.2.1 COMPANY shall first provide written notice to CITY of the identity of the proposed user or purchaser and a description of the proposed use or sale arrangement. In the event the lease or contract provides for the other entity to construct, install, operate or maintain any of COMPANY's System, no such arrangement shall proceed until the other entity enters into an agreement with the CITY for use of the CITY's Rights-of-Way.

2.2.2 COMPANY may not allow third parties to use its Facilities for any use that COMPANY itself does not have the authority under this License and Agreement.

2.2.3 COMPANY may enter into contracts with unrelated third party Telecommunications Corporations in the ordinary course of business for the resale of Telecommunications Services. Such contracts ("User Contracts") shall be subject to all requirements and provisions of this Agreement.

2.3 Co-location. COMPANY's installation of the System shall be reasonably coordinated with other utilities and CITY to accommodate opportunities for common installation along with COMPANY's project as set forth in this Agreement. All installations shall be in conduit as approved by the City Engineer.

2.4 Compliance with Laws.

2.4.1 COMPANY and CITY shall comply with all applicable laws as amended from time to time, including but not limited to, the Chandler City Code and the Chandler Charter and Arizona and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for COMPANY to comply with any law or regulation of the FCC or the Arizona Corporation Commission ("ACC") to engage in the business activities anticipated by this Agreement, COMPANY 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.

2.4.2 To the extent that COMPANY uses the CITY's Right of Way or other Public Property to provide services other than intrastate Calls through its Fiber Optic Networks, use of the ROW or other Public Property is subject to the terms and conditions of this Agreement and any applicable permits and laws.

2.5 Reports.

2.5.1 Upon request, COMPANY shall provide to CITY copies of any communications and reports submitted by COMPANY 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.

2.5.2 In addition to the Reports required in Section 3.2.3 of this Agreement, upon request of CITY, COMPANY shall provide CITY with regular reports, as needed, to establish COMPANY's compliance with the various requirements, fees and other provisions of this Agreement.

2.6 Non-Interference.

2.6.1 The System 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 or other authorized uses over, under or through in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property. All phases of permitting, construction, traffic control, backfilling, compaction and paving, and the location or relocation of the System shall be subject to regulation by the CITY as described in MAG, City supplements to MAG, and the City of Chandler Utility Manual. COMPANY shall keep accurate construction and installation records of the location of all its System and facilities, both aboveground and underground within the CITY and furnish them to CITY within thirty (30) days of installation. COMPANY shall furnish such information in an electronic format compatible with the then current CITY electronic format.

2.6.2 COMPANY shall locate and relocate, at its own expense, any facilities, equipment or other encroachment installed or maintained in, on or under the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property as may be necessary to facilitate any public purpose or any CITY project whenever directed to do so by CITY in writing on a non-discriminatory basis. Such relocations shall be accomplished in accordance with the directions from CITY including the City's construction schedule and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and an Encroachment Permit. COMPANY shall reimburse the City for any direct or indirect damages, but not special, incidental, or consequential damages, incurred by the City as a result of

delays in locations or relocations as required by this paragraph if caused by COMPANY's negligence. It is agreed that COMPANY will be responsible for primary loss investigation, defense and judgment when this paragraph is applicable.

2.6.3 COMPANY agrees to obtain permits as required by this Agreement prior to removing, abandoning, relocating or necessary reconstructing of any portion of its System in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property. Notwithstanding the foregoing, CITY understands and acknowledges there may be instances when COMPANY is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the System. COMPANY will maintain any annual permits required by the CITY for such repairs. COMPANY will notify CITY, if practicable, before the repairs and will apply for and obtain the necessary permits the next business day after the repairs are initiated.

2.7 Reservation 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 ordinance or the Charter of the City, and COMPANY by its execution of this Agreement agrees to be bound thereby and to comply with any action or requirements of CITY in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of CITY.

SECTION 3. FEES, CHARGES, PERFORMANCE BOND, SECURITY FUND, DAMAGE TO THE CITY OF CHANDLER'S RIGHTS OR WAY ("ROW") AND OTHER CITY OF CHANDLER PUBLIC PROPERTY AND LIQUIDATED DAMAGES.

COMPANY shall be solely responsible for the payment of all fees and charges in connection with COMPANY's performance under this Agreement, including those set forth below.

3.1 Application Fee.

COMPANY shall pay CITY for the administrative costs of processing this Application, an Application fee in the amount of Three Thousand Dollars ($3,000) prior to submittal for approval of this Agreement to the City Council, receipt of which is hereby acknowledged.

3.2 Annual Fee.

3.2.1 The parties acknowledge that applicable Arizona law prohibits the City from charging a recurring Right-of-Way Use Fee to providers of intrastate telecommunications services. Therefore, a Right-of-Way Fee will not be charged for the COMPANY's facilities that are used by the local network for intrastate telecommunications, *i.e.* those services where company operates and maintains that service (lit service) in accordance to an Arizona Certificate of Convenience and Necessity (CC&N).

3.2.2 If COMPANY places facilities that carry interstate traffic between and among the telecommunications corporation's interstate points of presence or leases its dark fiber to another carrier for purposes of carrying interstate traffic between and among that telecommunications corporation's interstate points of presence, then COMPANY shall pay CITY two dollars and three cents ($2.03) per linear foot of the City of Chandler's Right-of-Way or City of Chandler's other Public Property for such use.

3.2.3 If COMPANY places facilities that carry interstate traffic between and among the telecommunications corporation's interstate points of presence or leases its dark fiber to any entity not included in Section 3.2.2 of this Agreement, then COMPANY shall pay CITY two dollars and three cents ($2.03) per linear foot of the City of Chandler's Right-of-Way or City of Chandler's other Public Property for such use.

3.2.4 Commencing on the anniversary date as the date the first Encroachment Permit that such fee is applied, to COMPANY by CITY under this Agreement ("Permit Anniversary Date"), COMPANY shall report to the CITY the amount of linear feet applicable to this section. COMPANY will pay prorated annual fee by multiplying the annual footage fee, as adjusted, for the year of payment, by a fraction, the numerator which is the number of full months between the month of issuance of the permit and the next following anniversary date of this Agreement and denominator of which is twelve (12).

3.2.5 In the event, COMPANY cancels or returns a permit and does not construct or install Facilities, which had been approved by such a permit, the fees previously paid for use of in the City of Chandler's Rights of Way ("ROW") and on other Public Property shall be applied as a credit toward any annual fee or refunded to COMPANY by CITY.

3.2.6 Freeway Crossing Fee. If COMPANY desires to change the location of any of the System, including any related facilities or equipment, from that set forth in the initial Encroachment Permit Application(s), COMPANY shall apply for and obtain approval for an amendment to the Encroachment Permit prior to installation and construction. In the event COMPANY determines that it will occupy a one (1) four inch (4") conduit owned by the CITY within the duct bank underneath the freeway within Chandler of which CITY has control, COMPANY shall pay to CITY Eighteen Thousand Dollars ($18,000) per year for the term of the Agreement for such use, COMPANY is limited to using the conduit solely for installation and operation of the System as described in and in accordance with the terms of this Agreement. Payment shall be due on or before the first day of each year of the Term. CITY agrees that upon any extension, renewal or replacement of this Agreement, COMPANY shall be granted the right to occupy and use the afore-described conduit without any fee or charge for freeway access ("Freeway Crossing Fee") whatsoever. The provisions of the preceding sentence shall survive any expiration or termination of this Agreement. Placing any part of COMPANY'S facilities within any duct bank controlled by CITY

shall require amendment of the Encroachment Permit, updating the Exhibit A to this Agreement, and payment of the fee set forth in this Paragraph prior to installation and construction.

3.3 In Kind. This Agreement does not currently provide for any additional in-kind payments by COMPANY, however, should fees be owed under Section 3 above, the Parties may agree in writing that such new in-kind payments will be an offset to the fees owed. This subsection imposes no obligation on the CITY to agree to offset the fees in this Agreement or in any future agreement.

3.4 Failure to Pay. COMPANY agrees that if it fails to pay any amounts owed to the CITY by the time prescribed for payment, COMPANY shall pay interest on the amounts owed, at the rate of one percent (1%) per month.

3.5 Invoicing Contact Information:

Invoices will be sent to:

tw telecom of arizona llc
ATTN: Mr. Steve Klingler
tw telecom
P.O. Box 3710
Troy, MI 48099
twtelecominvoices@hovservicesprod.com

Invoicing contact information is:

Phone: 602-385-2002
Email: steve.klingler@twtelecom.com

Checks will be paid to:

CITY OF CHANDLER

And mailed to:

City of Chandler
ATTN: Regulatory Affairs Manager
Mail Stop 403
P.O. Box 4008
Chandler, AZ 85244-4008

Billing contact information is:

Phone: 480-782-3410
Email: margaret.coulter@chandleraz.gov

3.6 Taxes.

COMPANY shall obtain any required business/sales tax licenses and pay any applicable City, county and state transaction privilege and use tax. The Annual Footage Fee shall not be an offset to the transaction privilege tax, which COMPANY is obligated to pay.

3.7 Permit Fees and Construction Costs.

In addition to the fees and taxes set forth herein above, COMPANY shall pay those fees and charges for Encroachment Permit applications, inspection, testing, plan review, pavement damage fees, and any other fees adopted by CITY and applicable to persons doing work in CITY Right-of-Way. Additionally, if the CITY elects to retain outside inspectors or other persons to review and inspect COMPANY's plans, specifications and construction of the System, COMPANY shall reimburse the CITY for its actual costs incurred in connection therewith.

3.8 Performance Bond; Security Fund.

3.8.1 Performance Bond. COMPANY shall file and maintain until termination of this Agreement, a faithful performance bond in favor of CITY in amount that will be determined when COMPANY is being issued encroachment permits, to guarantee that COMPANY shall well and truly observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate CITY for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by COMPANY, as principal, and by a corporation Agreement by the Arizona Insurance Commissioner to transact the business of a fidelity and surety insurance company as surety, and said bond shall be approved by CITY. CITY and COMPANY 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.

3.8.2 Security Fund. Prior to receiving any permit to construct, install, maintain or perform any work in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property which requires an Encroachment Permit from the CITY pursuant to applicable City Codes, COMPANY shall deposit into a suitable interest-bearing account established by CITY, and COMPANY shall maintain on deposit through the term of this Agreement, the sum of not less than Fifty Thousand Dollars ($50,000) as security for the faithful performance by it of all the provisions of this Agreement, and compliance with all orders, permits and directions of any agency of the CITY having jurisdiction over its acts or defaults under this Agreement and any Encroachment Permit issued pursuant thereto, and the payments by COMPANY of any fees, claims, liens and taxes due the CITY which arise by reason of the construction, operation or maintenance of the facilities. CITY shall have the full power of withdrawal of funds from the account except that all interest accrued shall be payable to COMPANY on demand. No withdrawals shall be made from the security fund account without the prior written approval of the City Manager and

prior written notice of intent to withdraw to COMPANY. This fund shall remain in effect throughout the period of construction of COMPANY's System. Notwithstanding the foregoing, the form of the Security Fund shall be either a bond, letter of credit, or other form of security acceptable to the City's Risk Manager.

3.8.3 Within thirty (30) days after notice to COMPANY that any amount has been withdrawn by CITY from the security fund pursuant to Section 4.6.2 above, COMPANY shall deposit a sum of money sufficient to restore such security fund to the original amount.

3.8.4 If COMPANY fails, within ten (10) business days of a notice of intent to withdraw from the security fund, to pay CITY any taxes or fees due and unpaid; or fails to repay to CITY, within such ten (10) business days of such notice, any damages, costs or expenses which CITY shall be compelled to pay by reason of any act or default of COMPANY in connection with this Agreement; or fails, within thirty (30) days of such notice of failure by CITY to comply with any provision of this Agreement which CITY reasonably determines can be remedied by an expenditure of the security, CITY may immediately withdraw the amount thereof, with interest from the security fund. Upon such withdrawal, CITY shall notify COMPANY of the amounts and date thereof.

3.8.5 COMPANY shall be entitled to the return of such security fund, or portion thereof, as remains on deposit upon completion of all construction of COMPANY's System as shown on Exhibit A, or upon termination of this Agreement at an earlier date, provided that there is then no outstanding default on the part of COMPANY. In the event additional construction in the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property is applied for, COMPANY shall again deposit a cash security deposit in an amount determined by the City Manager and not to exceed Fifty Thousand Dollars ($50,000), before CITY issues the Encroachment Permit. Any funds that CITY erroneously or wrongfully withdraws shall be returned to COMPANY, with interest of one (1%) per month, within thirty (30) business days of such a determination.

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

3.9 Damage to Public Property.

Whenever the installation, removal, or relocation of any of COMPANY's System is required or permitted under this Agreement, and such installation, removal or relocation shall cause City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property to be damaged, COMPANY, at its sole cost and expense, shall promptly repair and return Public Property in which the System components are located to a safe and satisfactory condition in accordance with applicable laws, with provisions in the City of Chandler Utility Manual and the Maricopa Association of Governments (hereinafter referred to as "MAG")

and the City's supplements to MAG, reasonably satisfactory to the City Engineer. If COMPANY does not repair the site as just described, then CITY shall have the option, upon fifteen (15) days prior written notice to COMPANY, to perform or cause to be performed such reasonable and necessary work on behalf of COMPANY and to charge COMPANY for the proposed costs to be incurred or the actual costs incurred by the CITY at CITY's standard rates, plus an administrative fee of fifteen percent (15%). Upon the receipt of a demand for payment accompanied by explanation of cost and fees incurred by CITY, COMPANY shall, within thirty (30) days, reimburse CITY for such costs. For any pavement cuts by COMPANY, COMPANY agrees to restore the pavement and to reimburse the CITY for all costs arising from the reduction in the service life of any public road, in accordance with the provisions of Chapter 46 of the Chandler City Code and the fees established by the CITY pursuant thereto. COMPANY agrees to pay within thirty (30) days from the date of issuance of an invoice and explanation of costs and fees from CITY.

3.10 Hazardous Substances.

3.10.1 COMPANY is responsible for proper investigation and management of all Hazardous Substances under its control, including Hazardous Substances that it uses, generates or disposes of, and must comply with all Environmental Laws in carrying out its obligations under this Agreement. In the event COMPANY releases to the environment Hazardous Substances under its control, to the extent that a governmental agency with jurisdiction requires reporting, investigation, cleanup or remedial measures to be taken, COMPANY shall, at its sole cost and expense, promptly undertake such required actions. If COMPANY discovers a Preexisting Environmental Condition, COMPANY shall immediately notify the CITY.

3.10.2 "Hazardous Substances" for purposes of this Agreement means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

3.11 Public Emergency. CITY shall have the right, because of a public emergency, to sever, disrupt, dig-up or otherwise destroy facilities of COMPANY without any prior notice to COMPANY, if the action is deemed reasonably necessary by the City Manager, Fire Chief, Police Chief, City Street Transportation Director, Public Works Director or Water Services Director. A public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the CITY 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. COMPANY shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by CITY.

3.12 Blue Stake. COMPANY shall comply with A.R.S. §§ 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 COMPANY's facilities upon receipt of a locate call or

as promptly as possible, but in no event later than two (2) working days. A copy of the Agreement or proof of membership shall be filed with the CITY.

3.13 Liquidated Damages.

3.13.1 COMPANY understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of 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 specified below. The following amounts per day may be chargeable to the COMPANY for the following concerns:

(a) Each failure to properly restore the public Right-of-Way or to correct related violations of specifications, code ordinance or standards within ten (10) working days of having been notified by the CITY to correct such defects – two hundred dollars ($200) per day;

(b) Each failure (not covered by subsection (a) to comply with the provisions of this Agreement or applicable City Code provision or law – one hundred dollars ($100) per day.

3.13.2 If the City Manager concludes that COMPANY may be liable for liquidated damages, the City Manager shall issue to COMPANY by certified mail a Notice of Intention to Assess Liquidated Damages. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. COMPANY shall within thirty (30) days of receipt of such notice:

(a) Respond to the CITY in writing, contesting the CITY's assertion of violation and providing such information or documentation as may be necessary to support COMPANY position; or

(b) Cure any such violation (and provide written evidence of the same), or, in the event that, by the nature of the violation, such violation cannot be cured within such thirty (30) day period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. COMPANY shall report to the CITY, in writing, at thirty (30) day intervals as to COMPANY's efforts, indicating the steps taken by COMPANY to cure said violation and reporting COMPANY's progress until such violation is cured.

3.13.3 In the event that COMPANY contests the CITY'S assertion of violation or fails to respond to the CITY's notice of intent to assess liquidated damages, within twenty (20) days the CITY shall schedule a hearing in accordance with the procedures set forth in Sections 1-7, 46-2.12 and 46-2.13 of the Chandler City Code.

SECTION 4. TERM OF AGREEMENT

The term of this Agreement and duration of the rights, privileges and authorizations granted hereunder shall be for five (5) years from the effective date of the Agreement. The term may be renewed for additional five year terms upon mutual agreement in writing of the parties. A new application fee is required upon each renewal.

SECTION 5. ACCEPTANCE AND EFFECTIVE DATE

5.1 Written Acceptance.

COMPANY execution of this Agreement shall constitute its acceptance of the Agreement as granted and its agreement to be bound by and to comply with and to do everything, which is required of the COMPANY by this Agreement. Within twenty (20) days after the approval of this Agreement by CITY, or within such extended period of time as the City Council in its discretion may authorize, COMPANY shall file with the City Clerk the executed original of this Agreement evidencing its acceptance of this Agreement. COMPANY signature shall be acknowledged by COMPANY before a notary public. This Agreement is effective upon execution by both parties.

5.2 Validity of Agreement.

COMPANY shall acknowledge that as a condition of acceptance of this Agreement, COMPANY was required to be represented throughout the negotiations of the Agreement by its own attorneys and COMPANY had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. COMPANY 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, COMPANY acknowledges and accepts the right and authority of CITY to execute this Agreement, to issue this Agreement and to enforce the terms herein, and COMPANY agrees it shall not now or at any time hereafter contest or challenge CITY's authority under applicable federal, state and local law to enter into and enforce this Agreement in any city, state or federal court or regulatory or administrative agency.

SECTION 6. INSURANCE AND INDEMNITY

6.1 Indemnification. To the fullest extent permitted by law, COMPANY, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or

related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by COMPANY, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of COMPANY's and subcontractor's employees. The provisions of this paragraph shall survive termination of this Agreement.

6.2 Insurance:

6.2.1 General.

A. At the same time as execution of this Agreement, the COMPANY shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.

B. The COMPANY and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.

C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect COMPANY from liabilities that might arise out of the performance of the Agreement services under this Agreement by COMPANY, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the COMPANY is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the COMPANY from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

6.2.2. Minimum Scope And Limits Of Insurance. The COMPANY shall provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form. COMPANY must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than $2,000,000 for each occurrence, $4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles. COMPANY must maintain Business/Automobile Liability insurance with a limit of $1,000,000 each accident on COMPANY owned, hired, and non-owned vehicles assigned to or used in the performance of the COMPANY's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. Workers Compensation and Employers Liability Insurance: COMPANY must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COMPANY employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than $1,000,000 for each accident and $1,000,000 disease for each employee.

6.3. Additional Policy Provisions Required.

A. Self-Insured Retentions Or Deductibles. Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

B. City as Additional Insured. The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the COMPANY including the City's general supervision of the COMPANY; Products and Completed operations of the COMPANY; and automobiles owned, leased, hired, or borrowed by the COMPANY.

2. The COMPANY's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.

3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the COMPANY even if those limits of liability are in excess of those required by this Agreement except in regard to Worker's Compensation and Employer's Liability Insurance.

4. The COMPANY's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the COMPANY and must not contribute to it.

5. The COMPANY's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Coverage provided by the COMPANY must not be limited to the liability assumed under the indemnification provisions of this Agreement.

7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the COMPANY for the City.

8. The COMPANY, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The COMPANY must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the COMPANY must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

7. TRANSFERABILITY

7.1 This Agreement and the related rights and privileges may not be assigned or otherwise transferred without the express written consent of the CITY by an ordinance or resolution passed by the Chandler City Council, which consent shall not be unreasonably withheld or delayed. Any Agreement which is assigned or otherwise transferred pursuant to this Section shall be equally subject to all the obligations and privileges of this Agreement including any amendments, which will remain in effect, as if the assigned Agreement was the original Agreement.

7.2 The Agreement shall not be sublet or assigned, nor shall any of the related rights or privileges be leased, assigned, sold or transferred, either in whole or in part, nor shall title, either legal or equitable, or any right, or property interest pass to or vest in any person other than COMPANY, by act of the COMPANY or operation of law, without the consent of City, which consent shall not be unreasonably withheld or delayed. Prior to any proposed assignment becoming final, COMPANY shall seek the consent of CITY.

7.3 The approval of any change in ownership interest shall include an assignment agreement signed by the assignee, COMPANY, and CITY. COMPANY shall provide City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by the Licensee. COMPANY shall notify the City within 60 days of any change in mailing address.

7.4 After assignment, this Agreement, including any amendments, shall be binding on the assignee to the full extent that is was binding upon COMPANY.

7.5 Nothing in this Section prohibits a pledge, hypothecation, mortgage or similar instrument transferring conditional ownership of all or part of COMPANY's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of COMPANY, the lender may assume the rights and obligations of the COMPANY. The Lender may not transfer or change control of the Agreement without submitting the change to the CITY for approval. If the lender does continue operation on any basis at any time, the lender shall be subject to all provisions of the Agreement. No later than three years after assumption of control by the lender, the lender shall apply to the City for the right to continue assumption of control or to transfer the Agreement. Application by the Lender for approval of assumption of control or transfer shall be subject to consent by the Chandler City Council that shall not be unreasonably denied or withheld. A "Lender" for the purposes of this License does not include a company, person or corporation or other entities that operate cable television systems or fiber optics telecommunications systems as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the Agreement without City Council review and approval.

7.6 Notwithstanding the foregoing, prior consent shall not be required for transfer to any company which owns or controls, is owned or controlled by, or under common control with

the COMPANY, provided that, no such transfer shall be valid unless COMPANY and the proposed transferee submit a binding agreement and warranty to the CITY stating that:

7.6.1 The proposed transferee has read, accepts, and agrees to be bound by the terms of the Agreement;

7.6.2 The proposed transferee assumes all obligations, liabilities and responsibility pursuant to the Agreement for the acts and omissions of COMPANY, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which COMPANY could not have exercised; and

7.6.3 The transfer will not substantially diminish the financial resources available to the COMPANY.

7.7 Prior to executing such transfer described in this Section, COMPANY and the proposed transferee shall submit to the City a description of the nature of the transfer, and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the COMPANY. COMPANY may be required to pay a new application fee of $3,000 to cover the 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.

8. NON-EXCLUSIVE RIGHTS

8.3 Non-Exclusive Rights.

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 to deny to or lessen the powers and privileges granted CITY under the Constitution and laws of the State of Arizona.

8.4 Priority Rights.

Any and all rights granted to COMPANY under this Agreement shall be exercised at COMPANY's sole cost and expense and shall be subject to the prior and continuing right of CITY to use all the City of Chandler's Rights of Way ("ROW") and other City of Chandler Public Property concurrently, with any other person or persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the City of Chandler's Rights of Way ("ROW") and on other City of Chandler Public Property. Nothing in this Agreement shall be construed to grant, convey, create, or vest a perpetual real property interest in land to COMPANY, including any fee or leasehold interest, easement, or any franchise rights.

9. TERMINATION OF AGREEMENT FOR CAUSE AND BY MUTUAL AGREEMENT

9.1 Termination for Cause.

9.1.1 This Agreement is subject to termination for violations of the terms of this Agreement or for violation of applicable law pursuant to the provisions of Section 46-2.12 of the Chandler City Code and other applicable city, state or federal law.

9.1.2 The termination of this Agreement for cause is subject to the Appeal Procedure set forth in Sections 1.7, 46-2.12 and 46-2.13 of the Chandler City Code.

9.2 Termination By Mutual Agreement.

This Agreement may be canceled prior to its date of expiration by COMPANY by providing the CITY with ninety (90) days written notice and only upon making arrangements satisfactory with the CITY Engineer to remove all COMPANY facilities and equipment from City of Chandler Right -of-Way and City of Chandler Public Property unless the City Engineer agrees in writing to allow COMPANY to abandon part or all of its facilities in place. If the CITY Engineer agrees to allow COMPANY to abandon its facilities in place, the ownership of such System including everything permitted by CITY to be abandoned in place shall transfer to CITY and COMPANY shall cooperate to execute any documents necessary to accomplish such transfer.

9.3 Cancellation for Conflict of Interest.

Pursuant to A.R.S. § 38-511, CITY may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of CITY is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when the COMPANY receives written notice of the cancellation unless the notice specifies a later time.

9.4 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 COMPANY or a representative of the COMPANY 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 the COMPANY.

10. PROPRIETARY INFORMATION

Proprietary information disclosed by COMPANY for the purposes hereunder shall mean any document or material clearly identified by COMPANY, as confidential (hereinafter "Proprietary Information"). Such Proprietary Information shall include, but not be limited to, any customer lists, maps, financial information, technical information, or other information clearly identified as confidential by COMPANY.

10.1 Notice to Company.

Proprietary Information disclosed by COMPANY hereunder to CITY or its constituent departments shall be regarded as proprietary as to third parties. If CITY receives a request to disclose such information, CITY shall notify COMPANY of such request and allow COMPANY five (5) days to obtain a court order prohibiting disclosure of specified documents. The foregoing shall not apply to any information which is already in the public domain; however, if public domain information is included with Proprietary Information on the same document, CITY shall only disclose those portions within the public domain without providing COMPANY notice as provided hereinabove.

10.2 Public Records Law.

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

11. NOTICE

11.1 Written.

All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, or by facsimile or email transmission if a hard copy of the same is followed by delivery through the U.S. certified or registered mail return receipt requested or by private delivery systems, addressed as follows:

CITY OF CHANDLER:

Attention: Regulatory Affairs Manager
P.O. Box 4008, Mail Stop 403
Chandler, Arizona 85244-4008
Phone: (480) 782-3410
Fax: (480) 782-3415
Email: margaret.coulter@chandleraz.gov

COMPANY:

tw telecom of arizona llc
ATTN: Ms. Tina Davis
Sr. Vice President and General Counsel
10475 Park Meadows Dr.
Littleton, CO 80124
(303) 566-1279
Email: tina.davis@twtelecom.com

with copy to:

tw telecom of arizona llc
ATTN: VP Regulatory
10745 Park Meadows Drive
Littleton, CO 80124
Email: regulatoryvps@twtelecom.com

Notices shall be deemed sufficiently given and served upon the other party upon actual receipt if sent by nationally recognized overnight courier or U.S. Mail, certified mail, return receipt requested. CITY and COMPANY shall promptly notify the other party when changes in contact information occur.

12. ON-CALL ASSISTANCE

On-call assistance shall be available to staff employees of any City department having jurisdiction over COMPANY's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its System. CITY may contact by telephone the control center operator at the Time Warner Telecom Network Reliability Center (800-829-0420) regarding such problems or complaints.

13. 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.

14. FAILURE OF CITY TO ENFORCE AGREEMENT NO WAIVER

COMPANY shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of CITY upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

15. FORCE MAJEURE

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

16. GENERAL CONDITIONS

16.1 This Agreement shall be governed by the laws of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this License shall be instituted only in the courts located within Maricopa County, Arizona.

16.2 The CITY shall have the right of intervention in any suit or proceeding involving the Agreement to which COMPANY is party, and COMPANY shall not oppose that intervention.

16.3 The Parties agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the CITY did not have the authority to issue this Agreement under A.R.S. §§9-581 to 9-583, then this Agreement shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving 60 days written notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this Agreement except for conditions relating to the term of the Agreement and the right of termination. If this Agreement should be considered a revocable permit, the COMPANY acknowledges the authority of the City Council under Chandler City Code Chapter 46 to issue and terminate revocable permits as determined by CITY.

16.4 COMPANY shall have no recourse against the CITY or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision, requirement or enforcement of the Agreement, or because of defects in issuing the Agreement.

This Agreement executed this _____ day of _____, 2014.

CITY OF CHANDLER, an Arizona municipal corporation

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

tw telecom of arizona llc
By: tw telecom holdings inc., its sole member

By: Tina Davis

_____
Name of Authorized Signer
Title: _____

Tina Davis
Senior Vice President
General Counsel

ATTEST:

Ana Cline, Legal Asst.
Name and Title

EXHIBIT A

Map on File with City Clerk's Office