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JUL 28 2008

ORDINANCE NO. 4081

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING AN AGREEMENT BETWEEN TCG PHOENIX 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, TCG Phoenix has negotiated with the City of Chandler to enter into an 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 TCG Phoenix 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: That the Mayor of the City of Chandler is herewith authorized to execute the *Agreement Between TCG Phoenix And The City Of Chandler For The Use Of Facilities In The City's Rights-Of-Way And Public Places For the Placement and Operation of Communications Infrastructure.*

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 TCG Phoenix 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 _____, 2008.

ATTEST: MAYOR:

_____ _____

CITY CLERK

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____day of _____, 2008.

ATTEST: MAYOR

_____ _____

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4081 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the ____ day of _____, 2008 and that a quorum was present thereat.

_____

City Clerk

Published:

APPROVED AS TO FORM:

_____

AGREEMENT BETWEEN TCG PHOENIX AND THE CITY OF CHANDLER FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES TO ESTABLISH A COMMUNICATION SYSTEM

This Agreement for the Use of Public Property (hereinafter "Agreement") is entered into this ___day of ____, 2008, by and between the City of Chandler, Arizona, a political subdivision of the State of Arizona (hereinafter "CITY"), and TCG Phoenix, a New York general partnership (hereinafter "COMPANY"),

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

WHEREAS, pursuant to the Charter and City Code of Chandler, and by virtue of federal and state law, by the CITY'S police powers, by its authority over its public rights-of-way, and by other CITY powers and authority, the City of Chandler is authorized to enter into, renew, deny, and terminate agreements for use of the public rights-of-way for the installation, operation and maintenance of communications services within the CITY boundaries, and

WHEREAS, COMPANY has applied to CITY for permission to use certain CITY property, including but not limited to, CITY streets and easements for the placement of its infrastructure and communications system including conduit and fiber optic cables (hereinafter referred to as its "System") under certain Public Property in the CITY in compliance 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; and

WHEREAS, Overlashing is prohibited pursuant to this Agreement, and

WHEREAS, COMPANY has agreed to provide and maintain accurate maps showing the location of all facilities owned, leased or used by COMPANY in the CITY on both public and private property within the CITY, and to comply with such other mapping requirements as CITY may establish from time to time; and

WHEREAS, COMPANY is requesting permission to install and construct its System along the route depicted in Exhibit A to this Agreement; and

WHEREAS, COMPANY has agreed to comply with Public Property use requirements that CITY has established and may establish from time to time.

NOW, THEREFORE, CITY hereby grants COMPANY permission to use certain Public Property in the CITY under the following terms and conditions:

SECTION 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.

SECTION 2. PERMISSION GRANTED

2.1 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 on certain Public Property subject to mutually agreed upon terms and conditions at a time in the future when COMPANY submits applications for Encroachment Permits.

2.1.1 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 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.

2.1.2 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, 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 results 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.

2.1.3 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.

2.1.4 Any right or privilege claimed pursuant to this Agreement by COMPANY for any use of any public street or other 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.

2.2 Description of the System and its Construction.

2.2.1 COMPANY intends to construct infrastructure for use by telecommunications companies, businesses, entities and/or individuals by providing conduit and fiber optic network capability in CITY's public right-of-way. Such infrastructure may include, but is not limited to, Schedule 40 conduit and fiber optic cable, manholes 4x4x4, pull boxes/handholes 2x5x3 and 2x3x3, HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. 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 conduit will be placed outside of paved ROW wherever possible. Company will, nonetheless, build the System in accordance with plans approved by the City of Chandler.

2.2.2 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.

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

2.2.4 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.

2.3 Location of the System.

2.3.1 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.

2.3.2 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.

2.3.3 Pursuant to Section 2.3.1 of this Agreement, 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 3. SCOPE

3.1 Licensing Requirements.

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

3.2 Specific Authorization.

This Agreement authorizes COMPANY to use the public Rights-of-Way to build infrastructure for a System as noted in Section 2.2 of this Agreement. The authority granted pursuant to this Agreement to use Public Property does not authorize COMPANY use of the facilities for operating a cable television system, a cable system or authorize COMPANY to operate as a cable operator, as those terms are defined in the Communications Act of 1934, as amended, state law, or the City Code. The authority granted by this Agreement does not authorize the use of public Rights-of-Way for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the Federal Communications Commission (hereinafter "FCC"). The authority to install and construct its system on CITY property granted herein authorizes COMPANY only to install and construct such components or

system as is necessary to construct the infrastructure described in this Agreement and does not authorize COMPANY to install or construct any COMPANY equipment, materials or other facilities not expressly provided for in this Agreement.

3.3 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 its Public Property within CITY, without further prior consent of CITY, but only on the following conditions:

3.3.1 COMPANY shall first provide written notice to CITY of the identity of the proposed user or purchaser and the proposed use or sale arrangement.

3.3.2 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.

3.4 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.

3.5 Compliance with Laws.

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.

3.6 Reports.

3.6.1 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.

3.6.2 In addition to the Reports required in Section 4.2 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 and other provisions of this Agreement.

3.7 Non-Interference.

3.7.1 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 said streets and public ways. 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.

3.7.2 COMPANY shall locate and relocate, at its own expense, any facilities, equipment or other encroachment installed or maintained in, on or under any public place, Right-of-Way or highway, as may be necessary to facilitate any public purpose or any CITY project whenever directed to do so by CITY. 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 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.

3.7.3 COMPANY agrees to obtain permits as required by this Agreement prior to removing, abandoning, relocating or necessary reconstructing of any portion of its System on 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.

3.8 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 4. FEES, CHARGES, PERFORMANCE BOND, SECURITY FUND, DAMAGE TO 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.

4.1 Application Fee.

COMPANY shall pay CITY for the administrative costs of processing this Application, an Application fee in the amount of Two Thousand Dollars ($2,000) prior to submittal for approval of this Agreement to the City Council, receipt of which is hereby acknowledged.

4.2 Annual Fee.

4.2.1 The parties acknowledge that applicable Arizona law prohibits the City from charging a recurring Right-of-Way fee to providers of intra-state telecommunications services.

4.2.2 Only to the extent that Company is providing interstate telecommunications services, leasing its dark fiber or conduit, providing any other service not exempt pursuant to Section 4.2.1 of this Agreement without the provision of intrastate telecommunications services on that dark fiber or conduit the initial Annual Footage Fee shall be One Dollar and Eighty Cents ($1.80) multiplied by the number of linear feet of Public Property of the dark fiber or conduit.

4.2.3 Permits issued by CITY and shall be due and payable no later than forty-five (45) days after the date of issuance of an Encroachment Permit for the installation of that section of its System. In the event COMPANY cancels or returns an Encroachment Permit and does not construct or install the facilities, which had been approved by such Encroachment Permit, COMPANY shall be refunded the Permit fees.

4.2.4 Commencing on the anniversary date as the date the first Encroachment Permit was issued to COMPANY by CITY under this Agreement ("Permit Anniversary Date"), and continuing through the fifth year of the term, the Annual Footage Fee shall be escalated annually on the Permit Anniversary Date in an amount equivalent to the Consumer Price Index-All Urban Consumers, West Urban, All Items for each lineal foot of fiber optic cable now or hereafter to be installed within the public Rights-of-Way described in the permit.

4.2.5 Freeway Crossing Fee. Pursuant to Section 2.3.1 of this Agreement, 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.

4.3 Invoices will be sent to:

TCG Phoenix
ATTN: Corporate Real Estate Department
One AT&T Way
Bedminster, NJ 07921-0752
Phone: (908) 234-8303

4.4 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.

4.5 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 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.

4.6 Performance Bond; Security Fund.

4.6.1 Performance Bond. COMPANY shall file and maintain until termination of this Agreement, a faithful performance bond in favor of CITY in the sum of Fifty Thousand Dollars ($50,000), 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.

4.6.2 Security Fund. Prior to receiving any permit to construct, install, maintain or perform any work on 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 as shown on Exhibit A. 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.

4.6.3 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.

4.6.4 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.

4.6.5 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 on 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.

4.6.6 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.

4.7 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 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

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 from CITY.

4.8 Hazardous Substances.

4.8.1 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.

4.8.2 "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.

4.9 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.

4.10 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.

4.11 Liquidated Damages.

4.11.1 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 seven (7) 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.

4.11.2 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.

4.11.3 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 fifteen (15) 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 5. 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.

SECTION 6. ACCEPTANCE AND EFFECTIVE DATE

6.1 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.

6.2 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 7. INSURANCE AND INDEMNITY

7.1 General Requirements.

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

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

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

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

7.1.5 COMPANY insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this Agreement, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

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

7.1.7 The insurance policies may provide coverage, which contain deductibles or self- insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of COMPANY. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require COMPANY to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of $25,000 will be accepted only with permission of the Management Services Director or his / her designee.

7.1.8 All policies and certificates shall provide that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.

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

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

7.2 Proof of Insurance-Certificates of Insurance.

7.2.1 Prior to commencing work or services under this Agreement, COMPANY shall furnish to CITY Certificates of Insurance issued by COMPANY insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the CITY'S Risk Management Division approval of such Certificates.

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

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

7.3 Required Coverage.

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

7.3.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the COMPANY's employees;

7.3.3 Claims for damages insured by usual personal injury liability coverage;

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

7.3.5 Claims involving contractual liability insurance applicable to the COMPANY's obligations under the Indemnification Agreement.

7.4 Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than five million dollars ($5,000,000) limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of five million dollars ($5,000,000) per occurrence and an aggregate of $10,000,000 in coverage will be acceptable. The Commercial General Liability additional insured coverage shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for COMPANY's operations and products, and completed operations.

7.5 Worker's Compensation and Employer's Liability.

COMPANY shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over COMPANY's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than one million dollars ($1,000,000) for each accident, one million dollars ($1,000,000) disease coverage for each employee, and one million dollars ($1,000,000) disease policy limit. In case any work is subcontracted, COMPANY will require the sub-company to provide Worker's Compensation and Employer's Liability to at least the same extent as required of COMPANY.

7.6 Automobile Liability.

COMPANY shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars ($1,000,000) each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the Company's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc Policy Form CA 0011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of five million dollars ($5,000,000) per accident for bodily injury and property damage.

7.7 Indemnity.

7.7.1 To the fullest extent permitted by law, COMPANY shall defend, indemnify and hold harmless the CITY, its agents, representatives, officers, directors, officials and employees, individually and collectively, CITY from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any

kind and nature, wages or overtime compensation due employees in rendering service under this Agreement and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, work or services of COMPANY, its employees, agents, or any tier of subcontractors in the performance of this Agreement or of any other person for whose acts, errors, mistakes or omissions COMPANY may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law or ordinance, order or decree related to any failure on the part of COMPANY, its agents, employees or representatives to fulfill COMPANY's obligations under this Agreement. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CITY. The provisions of this paragraph shall survive termination of this Agreement.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

7.7.2 COMPANY further agrees to indemnify CITY, its officers and employees from and against all costs, damages, and expenses incurred by CITY, its officers and employees in the defense of any litigation brought by third parties challenging the right of CITY to issue this Agreement to COMPANY under CITY, Arizona or other applicable law. In the event that litigation is commenced, CITY may, but is not required to, tender the defense of the litigation to COMPANY, which shall then defend the litigation; provided, however, that if the CITY tenders the defense to COMPANY, COMPANY shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to COMPANY (and, where such terms directly obligate or affect CITY, acceptable to CITY), or, at any time of its election, to terminate this Agreement under the termination terms provided herein and withdraw from any litigation.

7.7.3 It is the purpose of this subsection to provide maximum indemnification to CITY under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the CITY by COMPANY.

7.7.4 The provisions of this subsection shall not be dependent or conditioned upon the validity of this Agreement and shall be and remain a binding right and obligation of the CITY and COMPANY even if part of all of this Agreement is declared null and void in a legal or administrative proceeding. It is the intent of COMPANY and CITY upon the effective date of this Agreement that the provision of this subsection serve as any such declaration and shall be a binding obligation of and inure to the benefit of COMPANY and CITY and their respective successors and assigns, if any.

7.7.5 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this subsection.

SECTION 8. TRANSFERABILITY

8.1 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.

8.2 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.

8.3 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.

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

8.5 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.

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

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

8.6.2 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

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

8.7 Prior to completing 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.

SECTION 9. NON-EXCLUSIVE RIGHTS

9.1 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.

9.2 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 Public Property exclusively or 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 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.

SECTION 10. TERMINATION OF AGREEMENT FOR CAUSE AND BY MUTUAL AGREEMENT

10.1 Termination for Cause.

10.1.1 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.

10.1.2 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.

10.2 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 Public Property and Right-of-Way 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.

10.3 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.

10.4 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.

SECTION 11. 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.

11.1 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.

11.2 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.).

SECTION 12. NOTICE

12.1 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. mail or by private delivery systems, addressed as follows:

CITY OF CHANDLER:
Attention: Margaret Coulter
P.O. Box 4008, Mail Stop 604
Chandler, Arizona 85244-4008
Phone: (480) 782-2221
Fax: (480) 782-2209
Email: margaret.coulter@chandleraz.gov

COMPANY:
TCG Phoenix
ATTN: Corporate Real Estate Department
One AT & T Way
Bedminster, N.J. 07921-0752

with copy to:
TCG Phoenix
ATTEN: General Counsel- Right-of-way
One AT&T Way
Bedminster, N.J. 07921-0752

Notices shall be deemed sufficiently given and served upon the other party if delivered personally, by email or by facsimile (provided with respect to email or facsimile, that such transmissions are received on a business day during normal business hours), or 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 occurs.

12.2 On-Call Assistance.

12.3 COMPANY 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 following phone number 800-622-7378, regarding such problems or complaints.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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 _____, 2008.

CITY OF CHANDLER,TCG Phoenix, an Arizona municipal corporation

_____
Mayor

Attest:

_____
City Clerk

TCG Phoenix,
a New York general partnership

By:_____
Anthony D. Fea, President

Attest:

_____
Title:_____

APPROVED AS TO FORM:

_____
City Attorney

SECTION 15. FORCE MAJEURE

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This Agreement executed this __ day of _____, 2008.

CITY OF CHANDLER,TCG Phoenix, an Arizona municipal corporation	TCG Phoenix, a New York general partnership
_____	By: _____
Mayor	Anthony D. Fea, President
Attest:	Attest:
_____	_____
City Clerk	Title: Senior Contract Manager

APPROVED AS TO FORM:

_____

City Attorney
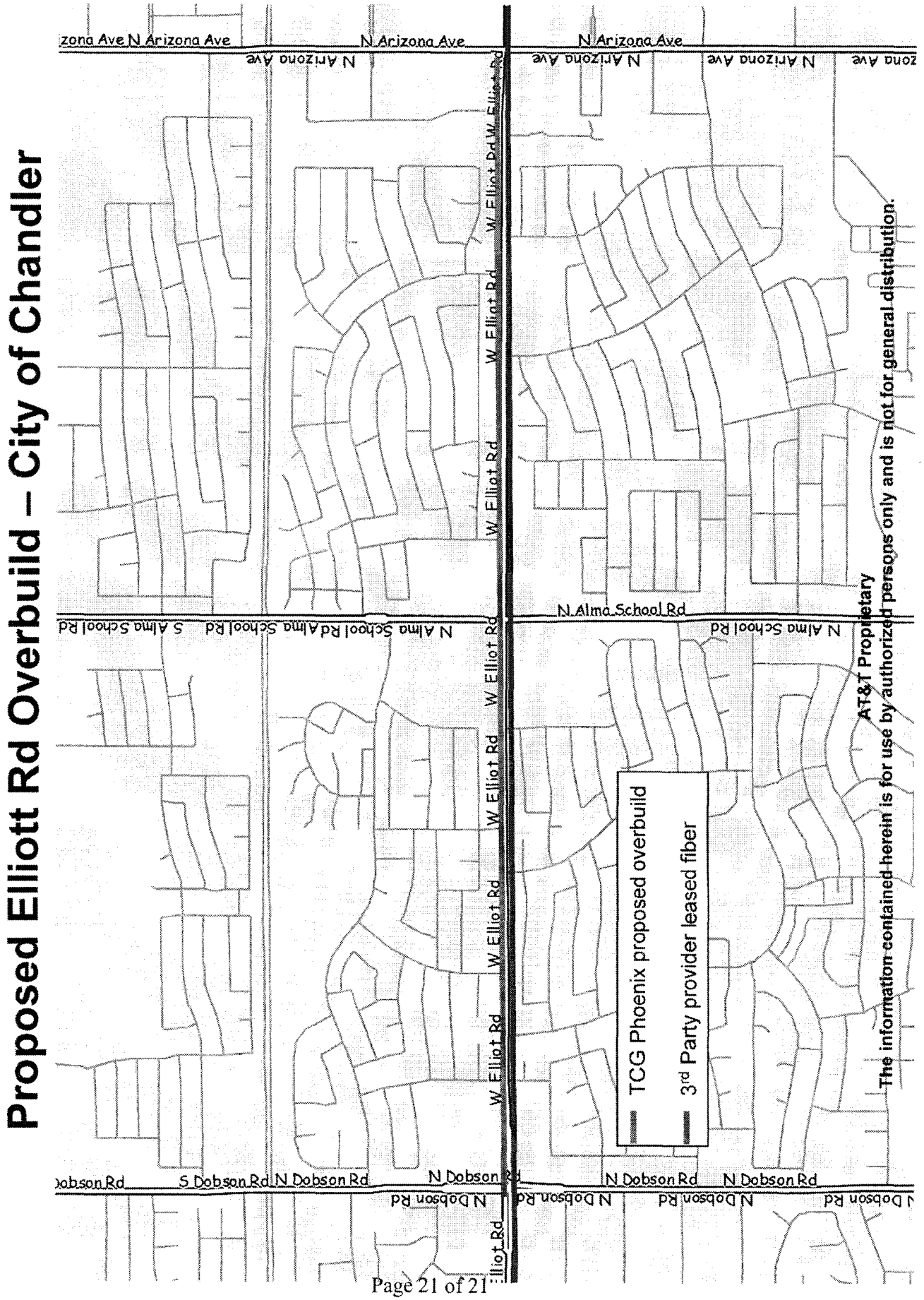
Exhibit "A" Proposed Route