



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: August 20, 2018

* = Mandatory, information must be provided

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

FirstDigital Telecom Arizona, LLC, a Utah Limited Liability Company ("Licensee")

***Project Title/Description:**

Nonexclusive Right-of-Way Use License for a Fiber Optic Communications System for FirstDigital Telecom Arizona, LLC (the "License"); Lic-0291.

***Purpose:**

The License grants Licensee the right to construct, install, maintain and/or operate a fiber optic communications system in the public right-of-way within Pima County and outside the confines of any incorporated city or town.

***Procurement Method:**

Exempt per Pima County Code Section 11.04.020.

***Program Goals/Predicted Outcomes:**

To provide fiber optics communications to service various users within unincorporated Pima County.

***Public Benefit:**

To improve and enhance communications systems serving the residents of Pima County.

***Metrics Available to Measure Performance:**

Licensee to provide certificate of insurance and Performance Bond as stipulated in the License; pay \$3,000 Application Fee, pay annual fees, if applicable, as provided in the License; obtain permits as required; comply with highway safety and construction standards; exercise care and restore County roadways or facilities as warranted; and provide written notice of change to use of facility.

***Retroactive:**

No.

To: COB- 8-7-18
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(11)

Contract Award Information

Document Type: CTN Department Code: PW Contract Number (i.e., 15-123): 19*014
Effective Date: 8/20/2018 Termination Date: 08/19/2023 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* _____ ☒ Revenue Amount: \$ 3,000.00

***Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Effective Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____
☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____
Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Effective Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:**

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?** _____

Contact: Michael D. Stofko
Department: Real Property Telephone: 520-724-6667
Department Director Signature/Date: [Signature] 7/31/2018
Deputy County Administrator Signature/Date: [Signature] 8/1/18
County Administrator Signature/Date: [Signature] 8/2/18
(Required for Board Agenda/Addendum Items)

CONTRACT	
NO.	<u>CTN-PW-19-014</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	



PIMA COUNTY

**NONEXCLUSIVE RIGHT-OF-WAY USE LICENSE
FOR A FIBER OPTIC COMMUNICATIONS SYSTEM
FOR
FIRSTDIGITAL TELECOM ARIZONA, LLC**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 9-583, Pima County ("the County"), a political subdivision of the State of Arizona, hereby grants FirstDigital Telecom Arizona, LLC, a Utah Limited Liability Company, ("the Licensee") the right and privilege of constructing, installing, maintaining, and/or operating a communications system in the public right-of-way within Pima County and outside the confines of any incorporated city or town.

NOW, THEREFORE, Licenser hereby grants Licensee this License subject to the following:

Section 1: Grant of License.

Pima County hereby grants Licensee a license, on a non-exclusive basis, to encroach upon certain portions of the public right-of-way within the County, lying outside the confines of any incorporated city or town to construct, install, maintain and operate communications facilities in such public right-of-way. The project area is 44,932 linear feet of underground and aerial fiber optic line as identified in the attached Exhibit A. Licensee shall pay to County such amounts as are required under Section 3, Application Fee and Per Linear Foot Fees. "Right-of-Way" shall include public streets, roads, and alleys. Licensee shall disclose to Pima County all persons with whom it contracts to use its facilities in the right-of-way for telecommunication purposes.

Section 2: Initial Term, Renewal, and Termination.

This License is granted for a term of five years, effective upon approval by the Pima County Board of Supervisors.

This License is renewable upon the mutual agreement of the parties and in accordance with applicable law.

If the Licensee is in default of any provision of this License and has not cured said default within sixty days after written notice thereof by the County, the County may terminate this License; provided, however, that if the nature of the default is such that it cannot reasonably be cured within said sixty-day period, the Licensee shall not be deemed in default if, within that sixty-day period, it commences such cure and thereafter diligently prosecutes the same to completion. Written notice of default under this Section shall be executed by the Pima County Telecom Contracts Administrator and served upon the Licensee as provided in Section 25, below. Upon termination of this License, the Licensee shall remove any facilities and/or equipment from the public right-of-way, at no expense to the County and to the satisfaction of the County, within ninety days. The Licensee shall restore the right-of-way to its pre-existing condition or as may be agreed upon mutually.

Section 3: Application Fee and Per Linear Foot Fees.

Pursuant to A.R.S. § 9-582 (A) (2), Licensee shall pay the County an application fee in the amount of \$3,000.00.

Payment shall be made by check payable to Pima County Treasurer and mailed to:

Pima County Revenue Management
Mail Stop: DT-BAB6-404
130 W Congress
Tucson, AZ 85701.

Licensee represents and warrants that all facilities licensed by this agreement are for the sole purpose of providing intra-state communications services not subject to recurring per linear foot fees allowed by A.R.S. § 9-583 (C.). Should Licensee install, maintain or acquire interstate telecommunications facilities that qualify for the linear foot fees, lease its dark fiber or conduit, or engage in any use of its facilities not exempt from per linear foot fees, Licensee shall immediately notify County in writing of the number of linear feet and its location, so that the per linear foot charge may be calculated. Provided the linear foot fees comply with applicable law, Licensee hereby consents to the addition of such fees to this license, which shall be paid annually to the address designated above, and shall be subject to annual increases through the term of this license and any renewals, in an amount equivalent to the Consumer Price Index (as published by the United States Department of Labor, Bureau of Labor Statistics) for each Linear Foot of fiber optic cable now or hereafter installed in the public Right-of-way described herein.

If payment is not received within 30 days of the due date, Licensee shall pay interest (simple interest, not compounded) on the past due license fee amount or any other sum due under this license, at the rate of ten percent per annum as allowed by A.R.S §44-1201. Interest shall be calculated from the date due until paid.

Section 4: Insurance.

Licensee shall carry adequate insurance to protect the parties hereto and County against any and all claims, demands, actions, judgments, costs, expenses, and liabilities that may arise out of or result, directly or indirectly, from Licensee's use of the Site, except such liability as shall arise solely from the negligence of County. The minimum amounts of such insurance shall be, as against liability arising from damage to property, one million dollars (\$1,000,000) as to any one occurrence, and, as against liability arising from injury to or death of persons, two million dollars (\$2,000,000) as to any one person, and two million dollars (\$2,000,000) as to any one occurrence. Automobile liability coverage for owned, non-owned, and hired vehicles must be provided with limits in the amount of \$1,000,000 combined single limit, or \$1,000,000 bodily injury / \$100,000 property damage. Licensee also shall carry such insurance as will protect it from all claims under any workmen's compensation laws that are in effect and may be applicable to Licensee. All insurance required hereunder shall remain in force for the entire term of this License. County may adjust its minimum insurance requirements hereunder at any time.

Licensee shall carry all-risk replacement value insurance under Commercial Property or EDP coverage for Licensee's on-site property. The insurance policies shall include a Waiver of Subrogation in favor of the County. Licensee shall provide County with current certificate of insurance evidencing that such insurance is in full force and effect and is non-cancelable without at least thirty days' written notice to County. The certificate of insurance as required herein must be presented to County within ten days of the effective date of this License Amendment and on each anniversary date thereof during the term of the License, including any renewals and any holding-over thereafter. A mixture of self-insurance, primary and excess insurance is acceptable to the County to comply with these requirements.

Licensee shall, during the term of this License, including any renewals and any holding-over thereafter, provide County with current certificates of insurance evidencing that such insurance is in full force and effect, names County as an additional insured, and is non-cancelable without at least thirty days' written notice to County. The certificates of insurance as required herein must be presented to County within ten days of the effective date of this License and on each anniversary date thereof during the term of the License, including any renewals and any holding-over thereafter. The Licensee's insurance shall be primary insurance and non-contributory with respect to all other available sources.

All certificates of insurance to be provided to County shall bear the County's Contract Number and Site Location and shall be addressed to:

Pima County Telecom Contracts Administrator
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1255

Section 5: Regulation of the Public Right-of-way.

All rights hereunder are granted under the express condition that the County shall have the power at any time to impose restrictions and limitations upon, and to make regulations as to, the Licensee's use of the public right-of-way as may be deemed best for the public interest,

safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public right-of-way. Prior to beginning any activity in the public right-of-way, the Licensee shall obtain all required permits from the County and any other applicable jurisdiction for such activity.

Section 6: Superior Rights.

The rights of the County in and to the use of the public right-of-way within the unincorporated areas of Pima County are and forever shall be paramount and superior to the rights of the Licensee.

Section 7: Alteration of the Public Right-of-way.

Nothing in this License shall be construed to prevent the County from abandoning, altering, improving, repairing, or maintaining its facilities and/or the public right-of-way, and for that purpose to require the Licensee, at the Licensee's expense, to remove, relocate, or abandon in place the Licensee's facilities and/or equipment in order to accommodate the activities of the County. The County shall not be liable for lost revenues sustained by the Licensee because of damage, modification, alteration, or destruction of its facilities and/or equipment in the public right-of-way.

Upon the termination of this License for any reason, or in the event that the partial or total removal of the Licensee's facilities and/or equipment becomes necessary for any reason, the Licensee shall remove its facilities and/or equipment promptly and at its own cost. In such event, the Licensee shall not seek compensation or financial reimbursement for costs associated with the removal or relocation of the facilities and/or equipment.

In the event that the facilities and/or equipment are not promptly removed by the Licensee, the County shall have the right to remove the facilities and/or equipment. To secure its obligation herewith, the Licensee shall provide a performance bond in the amount of \$5,000.00. The County shall be entitled to the bond proceeds in the event the Licensee fails to remove the facilities and/or equipment promptly upon reasonable notice, and the County thereafter removes the facilities and/or equipment. This bond shall be maintained throughout the term of this License. If evidence of a renewal of the bond is not provided to the County thirty days prior to the bond's expiration, this License shall terminate automatically and the bond shall become payable. This License shall become null and void if the bond lapses.

Section 8: Non-Exclusive Use.

Nothing in this agreement shall be construed to grant the Licensee an exclusive right to use the public right-of-way. The Licensee's facilities and equipment shall be erected, adjusted, installed, replaced, removed, relocated, and maintained in a manner that will not interfere with the reasonable use of the public right-of-way by the public, by the County, or by any other franchisee or licensee of the County. Moreover, the County expressly reserves the right to grant, at any time, similar franchises, licenses, and privileges as those granted by this License to other persons, firms, or corporations.

The Licensee's facilities and equipment shall be removed, relocated, or abandoned in place by the Licensee if the County determines that they impact, restrict, obstruct, or hinder the County's operation or location of County facilities, or the County's or the public's existing or future use of the public right-of-way.

The placement, installation, and/or maintenance of the Licensee's facilities and/or equipment in the public right-of-way shall not create or establish a vested interest or estate in the public right-of-way on behalf of the Licensee, and the Licensee shall have no right of entry upon the public right-of-way upon the termination or revocation of this License.

Section 9: Relocation.

The Licensee shall be solely responsible for the design, adjustment, removal, relocation, or replacement, temporarily or permanently, of any facility and/or equipment of the Licensee's that impacts, conflicts, or interferes with the County's use of the public right-of-way, or the with the County's improvement, relocation, maintenance, or adjustment of any facilities or equipment located in the public right-of-way. The cost of designing, adjusting, removing, relocating, or replacing the Licensee's facilities shall be the Licensee's sole responsibility, unless the Licensee has established prior rights with the County for the facilities to be affected.

Any adjustment, removal, replacement, or relocation of the Licensee's facilities and/or equipment by the Licensee shall be in accordance with an activity schedule determined by the County and provided to the Licensee within a reasonable period of time prior to the scheduled start date of any such activity. If the schedule is unacceptable to the Licensee, the Licensee may appeal the schedule to the Pima County Board of Supervisors. If the Licensee's facilities and/or equipment are not adjusted, removed, replaced, or relocated within the time period allotted by the County's activity schedule, the County may, at its discretion, adjust, remove, or relocate the Licensee's facilities and/or equipment, and the Licensee hereby agrees to be liable for all costs incurred by the County in so doing, including overhead, maintenance costs, and an administrative surcharge in the amount of fifteen percent of the total cost attributed to such adjustment, removal, or relocation of the Licensee's facilities and/or equipment. In the event the County incurs such costs, the County shall submit a bill to the Licensee for the incurred costs, and the Licensee shall pay the County the invoiced amount within ninety calendar days of receipt of the invoice. If the invoice is not paid by the Licensee in a timely manner, all rights granted to the Licensee under this agreement shall be suspended, and no permits will be issued to the Licensee for any work within the public right-of-way until the invoiced costs are paid in full.

The work required by the Licensee to design, construct, reconstruct, pothole for design, adjust, relocate, replace, or repair its facilities and/or equipment shall be the Licensee's sole responsibility. The cost of any delays to County projects caused by the Licensee's failure to complete its work in accordance with the County's activity schedule shall be the Licensee's sole responsibility. In the event the County incurs such costs, the County shall submit a bill to the Licensee for the incurred costs, and the Licensee shall pay the County the invoiced amount within ninety calendar days of receipt of the invoice. If the invoice is not paid by the Licensee in a timely manner, all rights granted to the Licensee under this agreement shall be suspended, and

no permits will be issued to the Licensee for any work within the public right-of-way until the invoiced costs are paid in full.

Section 10: Scenic Routes.

The placement or installation by the Licensee of facilities or equipment within any portion of the public right-of-way that has been designated by the Board of Supervisors as a scenic route must be constructed in accordance with the County's scenic routes ordinance.

Section 11: Location of Facilities.

As a condition of this License, the Licensee hereby agrees to have and maintain precise, up-to-date maps of any of its facilities or equipment located in the public right-of-way, and to make this information available to the County within fifteen calendar days of receiving a written request from the County. Beginning on the effective date of this Agreement, the Licensee shall maintain precise and verifiable horizontal and vertical location information, tied to an accepted County datum, and shall provide such information to the County within fifteen calendar days of receiving written notice from the County. The Licensee further agrees to provide surface-location marking of any of the Licensee's facilities or equipment that are located underground within any public right-of-way within two working days of a request from the County. In the event the Licensee is unable to provide this location information to the County within the allotted time frame, the County may, at its discretion, locate the Licensee's facilities and/or equipment, and the Licensee shall be liable for the costs incurred in so doing.

Section 12: Work in the Public Right-of-way.

A. Damage to other facilities.

In the construction, adjustment, removal, relocation, repair, operation, and maintenance of its facilities and equipment, the Licensee shall avoid causing or permitting any damage, disturbance, or unnecessary modification or alteration to County facilities, including pavement, or to the facilities or equipment of others, located in the public right-of-way. If the Licensee causes or permits any such damage, disturbance, or unnecessary alteration or modification, the Licensee, at its sole expense and in a manner approved by the County Engineer, shall restore the damaged, disturbed, altered, or modified facilities or equipment to the condition in which they existed before being so damaged, disturbed, altered, or modified, and also shall be liable to the owner of such facilities or equipment for any other losses or expenses that may accrue as a result of the damage, disturbance, alteration, or modification. The restoration of such facilities and/or equipment shall be initiated promptly and completed expeditiously by the Licensee, who shall give priority to such restoration over all of the Licensee's non-emergency activities.

B. Damage to vegetation.

In the construction, adjustment, removal, relocation, repair, operation, and maintenance of its facilities and equipment, the Licensee shall use all necessary care to

avoid damaging or disturbing existing vegetation in the public right-of-way. If the Licensee causes or permits any such damage or disturbance, the Licensee shall revegetate the right-of-way at its sole expense and in accordance with all County regulations then in effect.

C. Adjacent properties.

The Licensee shall provide prior written notice to the owners or other persons having lawful control of adjoining property of any activity by the Licensee that might interfere with access to or the use of said adjoining property. The Licensee shall maintain access to any adjoining property during all construction activities or other operations, except to the extent that this requirement of maintaining access is waived in writing by the owner or other person having lawful control of such adjoining property. If an emergency requires activity without such written notice, the Licensee shall use its best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property.

D. County Access to Property and Facilities.

In the interest of public safety, the County shall retain first priority to access and maintain any County property (including but not limited to roadways, drainage structures, traffic-control devices, and supporting structures). The Licensee shall not interfere in any way with County employees or equipment needing access to any County property, whether or not facilities or equipment of the Licensee is located on such property. In such an event that County property and property of the Licensee are co-located and both require maintenance (for example, weather-related damage), the County will have access priority. In the event that any activity by the Licensee impacts the operation of County traffic-control signals or devices, the Licensee shall provide temporary traffic control until such time as the signals or devices resume normal operation.

Section 13: Design and Location of Facilities and Equipment.

A. Damage or injury.

The Licensee shall use reasonable care at all times to avoid damage or injury to persons or property during the construction, adjustment, removal, relocation, repair, operation, or maintenance of the Licensee's facilities and/or equipment.

B. County guidelines for location and construction of facilities.

The location and construction of the Licensee's facilities and/or equipment in the public right-of-way shall conform to County standards and guidelines then in effect, and as may be directed by the County in order not to interfere with any planned future use of the public right-of-way by the County.

C. Interference with other uses.

The Licensee's facilities and equipment shall be located in a manner designed to cause the least amount of interference with the public's existing or future use of roads, streets, alleys, and other public rights of way, and in such a way as will minimize interference with the rights and convenience of owners and users of adjacent property.

D. Removal of facilities in the public interest.

The County may require the Licensee, at the Licensee's sole expense, to remove or relocate any of the Licensee's facilities or equipment that present a potential hazards to the public, that interfere with the public's use of the public right-of-way, or are determined by the County to be aesthetically undesirable.

E. Notice to adjacent property; Evaluation of options.

The Licensee shall be responsible for notifying the owners or other persons having lawful control of adjoining property in writing about permanent or temporary above- or below-ground facilities to be constructed in the public right-of-way. The Licensee shall make every reasonable effort to resolve the concerns of owners or other persons having lawful control of adjoining property regarding the construction of the Licensee's facilities. Should the County determine that the Licensee has failed reasonably to evaluate all options available to alleviate such concerns, the County may require the Licensee to relocate its facilities at the Licensee's sole expense.

Section 14: Construction Safety.

The Licensee shall be responsible for the cost of excavating in a "careful and prudent manner" any of the Licensee's underground facilities on all County construction projects occurring within the public right-of-way pursuant to A.R.S. Title 40, §§ 360.21 and 360.22 (A).

Any opening or obstruction in the public right-of-way caused by the Licensee during the course of the Licensee's activities in the public right-of-way shall be guarded and protected at all times by safety barriers erected by the Licensee that shall be clearly designated by warning lights during periods of dusk and darkness. Any work performed by the Licensee in or adjacent to a public roadway open for travel shall be properly signed and marked by the Licensee with warning and directional devices in accordance with all applicable state and local traffic regulations and in accordance with the Arizona Department of Transportation's Traffic Control Manual for Highway Construction and Maintenance.

Section 15: Drainage.

During construction or excavation in the public right-of-way, the Licensee shall provide proper drainage so that the public right-of-way will be free from standing surface water and adequately drained so as not to cause flood or erosion damage to any County facilities or to surrounding property. The Licensee may be required at the request of the County to submit

drainage engineering data and design plans to the County for review and approval prior to the issuance of any right-of-way-use permit by the County.

Section 16: Issuance of Permit not County Approval of Violation of Other Law.

The County's review, approval, or acceptance of plans or specifications, or issuance of a permit for the installation, construction, or location of a facility or equipment by the Licensee shall not be construed to be an authorization for or approval of a violation of any federal, state, or local law or regulation, or of any industry standard, pertaining to the location or construction of a utility facility in the public right-of-way. No permit or approval presuming to give such authority shall be valid or otherwise relieve the Licensee of its obligations under this License regarding the location and construction of facilities.

Section 17: County Inspection.

The County, if it deems necessary, has the right to inspect any work done by the Licensee in the public right-of-way to ensure proper performance of the terms of this License and conformance with any applicable federal, state, and/or local laws, ordinances, and regulations. The County may require the Licensee to pay a reasonable and uniform fee to cover the actual costs of inspections performed by the County or its contractor under this provision. The County may, at its discretion, pothole the Licensee's facilities to verify conformance with the provisions of this agreement, and the Licensee shall be liable for the cost of such potholing, along with an administrative surcharge in the amount of fifteen percent of the total cost of the potholing should the Licensee's facilities be found to be out of conformance. The Licensee shall be responsible for taking corrective action to bring "as-built" data into conformance with verified facilities.

Section 18: Abandonment of Facilities.

Abandonment in place by the Licensee of any of its facilities or equipment located within the public right-of-way may only occur by acquiring written approval from the County.

Section 19: Liability and Indemnity.

The Licensee acknowledges its sole liability for any of its facilities and/or equipment installed in the public right-of-way, and for any activities the Licensee performs within the public right-of-way. The Licensee agrees to indemnify, hold harmless, and defend the County and its officials, agents, servants, and employees against any and all claims for injuries to persons or damage to property, whether intentional, negligent, or otherwise, arising out of the Licensee's work in the public right-of-way, or due to the existence of the Licensee's facilities and/or equipment in the public right-of-way, or in any way related to the Licensee's exercise of its rights under this License. Neither the issuance of a County permit for installation or location of a facility or equipment, nor County approval of the activity, installation, or location, nor the failure of the County to direct the Licensee to take any precautions or make any changes or to refrain from doing anything shall excuse the Licensee of its responsibilities hereunder to the County or others in the case of any injury to persons or damage to property.

If the County is sued in any court by any person, firm, association, or corporation to recover damages for injuries to person or property on account of the installation, repairing, operation, and/or maintenance of the Licensee's facilities or equipment, the Licensee shall defend all such suits and pay any resulting judgments, and shall, at the option of the County, be made a party to any such court proceeding.

Section 20: County Participation in Legal Actions.

The County shall have the right at all times to take part in any suit or action instituted by or against the Licensee in which any judgment or decree can be rendered or foreclosing any lien on any of the Licensee's property situated within the public right-of-way, or affecting the rights, powers, or duties of the Licensee to do or not to do anything which by this License it may be required to do or not to do, and also to take such steps as the County may deem essential to protect the interests of the County or the public.

The County shall have the right to intervene in any suit, action, or proceeding by any person or persons, firm, or corporation seeking to enjoin, restrain, or in any manner interfere with the Licensee in the performance or observance by it of any of the terms or conditions of this License, or of any regulation, notice, or direction of the County in such connection, or which involves or might involve the constitutionality, validity, or enforcement of this License, and the County may move for dissolution of any such injunction or restraining order, or take any other appropriate step in any such suit, action, or proceeding that it may deem necessary or advisable in order to protect its interests.

Section 21: Compliance with License Conditions; Ordinances.

The Licensee agrees to conform to, abide by, and perform all of the conditions, provisions, requirements, and limitations in this License Agreement. The Licensee shall be subject to all County ordinances now in force or hereafter adopted, including all ordinances relating to the use of the public right-of-way by utilities.

Section 22: Assignment.

The Licensee hereby agrees that it will not sell, assign, or transfer this License or any of the Licensee's facilities or equipment in the public right-of-way, nor lease the total capacity of its network to another entity without the prior written approval of the Pima County Board of Supervisors, which approval shall not be withheld, conditioned, or delayed unreasonably.

This prohibition shall not apply in the case of a sale, assignment, transfer, or lease by the Licensee to an affiliated interest, nor shall it apply to assignments made or security interests granted in order to secure financing. The Licensee shall, however, provide at least thirty days' advance notice of any such affiliate transfer, assignment, lease or sale. The County shall have discretion to review the financial, technical, and operational qualifications of any entity acquiring this License or any of the Licensee's facilities or equipment in the public right-of-way.

Section 23: Conflict of Interest.

This Agreement is subject to A.R.S. section 38-511, which provides for the cancellation of contracts for certain conflicts of interest.

Section 24: Non-Discrimination

Licensee agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors.** Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, Licensee shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

Section 25: Contact Information.

All notices or contacts concerning this License shall be provided in writing to:

Pima County: Pima County Real Property
 Attn: Telecom Contract Administrator
 201 N. Stone Avenue, 6th Floor
 Tucson, AZ 85701-1215
 Phone: 520-724-6667
 E-mail: mike.stofko@pima.gov

With payment to: Pima County Revenue Management
 130 W Congress
 Mail Stop: DT-BAB6-404
 Tucson, AZ 85701

Licensee: FirstDigital Telecom Arizona, LLC
 Attn: Jordan E. Toone, Esq.
 Parr Brown Gee & Loveless, PC
 101 South 200 East, Suite 700
 Salt Lake City, UT 84111
 Phone: 801-257-7913
 E-mail: jtoone@parrbrown.com

Any change in any of the County or Licensee's contact information above shall be provided to the Licensee or the County, respectively, in writing.

IN WITNESS WHEREOF, the parties have affixed their signatures to this License on the dates written below.

PIMA COUNTY:

Chairman, Board of Supervisors

Date

ATTEST:

Clerk of the Board of Supervisors

Date

LICENSEE:

Wesley McDongal
Authorized Agent

FirstDigital Telecom Arizona, LLC

Wesley McDongal, President
Name and Title (Please Print)

7/24/18
Date

APPROVED AS TO CONTENT:

Dan Hunt

Dan Hunt, Pima County Chief Information Officer

7/25/2018
Date

APPROVED AS TO FORM:

Chris Straub

Chris Straub, Pima County Deputy Attorney

7-25-2018
Date

ucson FDT Fiber Network

on map of the fiber network purchased by FirstDigital

Legend

- Aerial
- Undergro

