

COB - BOSAIR FORM

01/28/2026 4:38 PM (MST)

Submitted by Lupe.Fimbres@pima.gov



BOARD OF SUPERVISORS AGENDA ITEM REPORT (BOSAIR)

All fields are required. Enter N/A if not applicable. For number fields, enter 0 if not applicable.

Record Number: CT RPS CT2600000008

Award Type: Contract

Is a Board Meeting Date Requested? Yes

Requested Board Meeting Date: 02/17/2026

Signature Only:

NO

Procurement Director Award / Delegated Award: • N/A

Supplier / Customer / Grantor / Subrecipient: WANRack, LLC

Project Title / Description: Pima County Nonexclusive Right-of-Way License for a Fiber Optic Communications System for WANRack, LLC

Purpose: The License will grant WANRack, LLC the right to construct, install, maintain and operate a fiber optic communications system in the public Right of-Way ("ROW") within Pima County, and outside the confines of any incorporated city or town. Pursuant to A.R.S. § 9-583, Licensee will pay an application fee of \$3,000 and an annual Fiber License Fee is \$2.15 per linear foot, adjusted for CPI, during the term for all qualifying facilities installed. Total revenue will increase as permits are issued. (Lic-0388)

Procurement Method: Real Property Agreements, land Titles, Appraisals, Relocation, Property Management: Exempt per Section 11.04.020

Procurement Method Additional Info: N/A

Program Goals/Predicted Outcomes: WANRack, LLC will be allowed to apply for permits required for the construction, installation, operation, maintenance and repair of fiber optic facilities within Pima County ROW. Licensee will install those facilities to connect customers and provide telecommunications and information services.

Public Benefit and Impact: Customers, including the Flowing Wells School District, will have access to a fiber optic communications system.

Budget Pillar • Improve the quality of life

TO: COB, 2/4/26 (1)

VERSION: 0

PAGES: 29

FEB04'26AM1033PO

Support of Prosperity Initiative:

- 9. Expand Broadband Services and Address Barriers to Digital Inclusion

Provide information that explains how this activity supports the selected Prosperity Initiatives

WANRack, LLC will build a new fiber Wide Area Network (WAN) that will support Flowing Wells schools with internet access.

Metrics Available to Measure Performance:

Licensee will pay an annual Fiber License Fee is \$2.15 per linear foot, adjusted annually based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for all Items (CPI). Licensee will maintain as-built drawings of its facilities located within the ROW and make them available to County staff.

Retroactive:

NO

Contract / Award Information

Record Number: CT RPS CT2600000008

Document Type: CT

Department Code: RPS

Contract Number: CT2600000008

Commencement Date: 02/17/2026

Termination Date: 06/30/2031

Total Expense Amount:

\$0.00

Total Revenue Amount:

\$3,000.00

Funding Source Name(s) Required: Transportation General Fund

Funding from General Fund?

NO

Contract is fully or partially funded with Federal Funds?

NO

Were insurance or indemnity clauses modified?

NO

Vendor is using a Social Security Number?

NO

Department: Real Property Services

Name: George Andros

Telephone:

(520) 724-6308

Add Procurement Department Signatures

No

Add GMI Department Signatures

No

Department Director Signature:

[Signature] For Director

Date:

1/29/2026

Deputy County Administrator Signature:

[Signature]

Date:

2/3/2026

County Administrator Signature:

[Signature]

Date:

2/3/2026



PIMA COUNTY

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

This Non-Exclusive Fiber License Agreement ("License" or "Agreement") is effective as of the date this Agreement is signed by the Chair of the Pima County Board of Supervisors (the "Effective Date"), by and between Pima County, a political subdivision of the state of Arizona ("County") and WANRack, LLC, a Delaware limited liability company ("Licensee").

BACKGROUND

1. County owns and maintains public streets, alleys, and other rights-of-way within the boundaries of Pima County outside the confines of any incorporated city or town.
2. County is authorized to regulate its streets, alleys, and other rights-of-way, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, construction, operation and maintenance of such Facilities within the County's boundaries pursuant to Pima County Ordinance No. 2008-72 and A.R.S. §§ 11-251, 40-283.
3. County reserves rights to construct, use, and allow others to construct and use all manner of additional improvements in the right-of-way.
4. Licensee has applied to the County for permission to use the right-of-way to construct, install, operate, maintain and repair fiber optic facilities to connect customers and provide telecommunications and information services.

5. Licensee will secure the appropriate licenses, right-of-way use, and other permits required by County Code for the placement of its facilities within Pima County.
6. Licensee agrees to provide and maintain accurate records showing the location of its network owned, installed or used by Licensee within, on, or under public rights-of-way within the County and to comply with reasonable mapping requirements as County may establish from time to time.
7. Licensee has agreed to comply with public property use requirements that County has established and may reasonably establish from time to time in accordance with state and federal laws.
8. Licensee represents and warrants that it has a valid Certificate of Convenience and Necessity ("CCN") issued by the Arizona Corporation Commission and will provide County a copy of the CCN.

NOW THEREFORE, for and in consideration of the amounts hereinafter to be paid by Licensee, the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the County hereby grants to Licensee this License and permission to use the public right-of-way pursuant to the terms and conditions set forth herein.

SECTION 1. Definitions

ACC means the Arizona Corporation Commission.

A.R.S. means Arizona Revised Statutes.

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

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

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

Conduit System means any combination of Ducts, Conduits, manholes and handholes joined to form an integrated whole.

Contractor(s) means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that performs services or provides goods relating to this Agreement. Contractor shall include any subcontractor hired and/or used by Licensee Contractors for the performance of services or provision of goods relating to this Agreement.

Dark Fiber means fiber optic strands that are not connected to transmission equipment or that are not otherwise part of an operating Fiber Optic Network.

Duct means any enclosed raceway for fiber optic cable, either singly or in Duct banks.

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

Facilities means facilities authorized by the County to be used in the provision of Telecommunications and Information Services, placed in, on, or under Public Highways, or, when specifically authorized, on other County-owned property including, but not limited to, all parts of Licensee's fiber optic network, infrastructure, and communications facilities and equipment under and above ground, to include Dark Fiber, fiber optic cable and its component parts and appurtenances, and the other cables, wires, components, cabinets, ducts, conduits, connectors, chambers, manholes, manhole covers, handholes, pedestals, splitters, attachments, and other property, components, materials, apparatus and appurtenances.

FCC means the Federal Communications Commission.

Fiber License Fee means the current annual linear foot fee paid annually for the construction, maintenance, repair, operation or acquisition of fiber optic communications systems or qualifying interstate telecommunications facilities pursuant to A.R.S. § 9.583(C) and calculated pursuant to Section 13.2.2 of this Agreement, including any escalation pursuant to Section 13.2.2.1.

Fiber Optic Network means the technology of guiding and projecting light for use as a communications medium in a cable containing bundles of multiple optical fibers that is routed through and inclusive of Licensee's Facilities.

Hazardous Substances means any substances, waste or toxic substances as identified in the Arizona Hazardous Waste Management Act.

Holdover Term means the period of not more than 60 days following the expiration of the Agreement and Amendment(s) during which time the Licensee and County are negotiating terms and conditions for a new Agreement.

Information Services means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via a Communications Network, and includes electronic publishing, but does not include any use of such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Innerduct means a pathway created by subdividing a Duct into smaller channels.

Interstate Call means a call in a conventional circuit-switched network that originates in one state

and terminates in a different state (or country).

Interstate Telecommunications Services Provider means a Telecommunications Corporation that places underground or above ground Facilities in the Public Highway for interstate telecommunications services.

Interstate Traffic means a communication or transmission that originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state, territory, possession, or the District of Columbia.

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

Parties shall collectively mean the County and WANRack, LLC.

Public Emergency means any condition which, in the opinion of County officials, poses an immediate threat to the lives or property of the citizens of Pima County 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.

Public Highway shall have the same meaning as Right-of-way ("ROW").

Public Service Corporation means a corporation authorized by the ACC to engage in furnishing gas, oil, or electricity to County for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers.

Public Utility Easement means dedicated strips of land established via subdivision plat or recorded easement granting utilities the right to install and maintain facilities with oversight from County for construction coordination, traffic control, and safety compliance.

Right-of-way ("ROW") means the area on, below or above any public streets, roads, alleys, bridges, highways, and other relevant infrastructure except federal and state highways within the unincorporated areas of Pima County.

ROW Use Permit is an official authorization required for the Licensee to perform work within the ROW for the construction, installation and maintenance of a specific location of Licensee's Facilities. Permit will be subject to all applicable fees for the specific location and other terms and conditions in accordance with the County and other applicable law and regulations as the County determines. A ROW Use Permit is needed for any construction or improvements within Pima County right-of-way.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choice, without change in the form or content of the information as sent and received. The term does not include commercial mobile radio services, pay phone services, interstate services or cable services.

Telecommunications Corporation means any Public Service Corporation to the extent that it provides telecommunications services in this state.

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

User(s) mean any unrelated third-party who contracts with Licensee to use of the Facilities set forth in this Agreement.

User Contract means a legally binding agreement that establishes the rules the users must abide by in alignment with the terms and conditions of this Agreement.

SECTION 2. Permission to Use Right-of-Way

2.1 Subject to the provisions of this Agreement, any addenda thereto, the County Code, local regulations, and Arizona and federal law and regulation, County hereby grants to Licensee a revocable and non-exclusive license to use the designated portions of the Right-of-Way ("ROW") subject to and conditioned upon Licensee's full, timely, complete and faithful performance of all obligations to be performed or required hereunder by Licensee, and Licensee hereby accepts the terms and conditions of this Agreement.

2.2 Licensee's use and occupation of the ROW shall in all respects conform to all and each of the following provisions:

2.2.1 Permitted Uses. Licensee shall use the County ROW solely for the uses allowed under this Agreement and shall conduct no other activity at or from those designated portions of the ROW where Licensee has its Facilities. The permitted uses are limited to the following:

2.2.1.1 Constructing, maintaining, repairing and operating the Facilities as described in this Agreement.

2.2.1.2 Licensee represents and warrants all Facilities licensed by this Agreement are for the purpose of providing Telecommunications Services including both interstate and intrastate telecommunications services. Licensee acknowledges that Facilities placed underground in the public right-of-way that carry Interstate Traffic between and among any interstate points of presence and the

leasing of Dark Fiber or Conduit are subject to the recurring annual Fiber License Fee pursuant to A.R.S. § 9-583(C) and Section 4.4 of this Agreement. Prior to Licensee installing, maintaining or acquiring Interstate Telecommunications Facilities that qualify for linear foot fees pursuant to A.R.S. § 9-583(C), leasing its Dark fiber or Conduit or engaging in any use of its Facilities subject to Fiber License Fees, Licensee shall notify County in writing of the number of linear feet and its location, so the Fiber License Fee in Section 13.2.2 may be calculated. Provided the Fiber License Fee complies with applicable law, Licensee hereby consents to pay the Fiber License Fee prior to the time of ROW Use Permit issuance, and shall be subject to annual increases through the term of this Agreement and any renewals, as determined in Section 13 below for each linear foot of Facilities now or hereafter installed in the public ROW described herein.

- 2.2.1.3 All Fiber License Fees as defined in Section 13.2.2 shall be pro-rated and calculated from the date of permit issuance to the next anniversary date of this Agreement and such amount will be added on to any annual fee that is due on the anniversary date of this Agreement.
- 2.3 All other uses of the ROW are prohibited. Licensee may not allow third parties to use the Facilities for any use that Licensee itself does not have the authority under this License and Agreement to use the Facilities for.
 - 2.3.1 This Agreement does not prohibit the Parties from entering into other agreements regarding Conduit Systems, Communication Networks, or Fiber Optic Networks should both Parties desire to do so in their sole and absolute discretion.
- 2.4 The authority to install and construct any Facilities in County ROW granted herein authorizes Licensee only to install such Facilities as is necessary to construct and operate the infrastructure described in this Agreement to provide the authorized Telecommunications Services and/or Information Services and does not authorize Licensee to install or construct any Facilities not expressly provided for in this Agreement or any addendum thereto.
- 2.5 To the extent that Licensee occupies any portion of the ROW solely with empty Conduit or for Dark Fiber leasing or ceases to use any portion of the County's ROW to provide Telecommunications or Information Services but continues to use such portion of the ROW, then such use of the ROW is subject to the terms and conditions of this Agreement and any applicable permits, fees, and laws.
- 2.6 Licensee shall comply with all applicable laws as amended from time to time, using industry standard practices and in full compliance with Standard Specifications and Details for Public Improvements sponsored and distributed by the Pima Association of Governments as amended (hereinafter referred to as "PAG"), the County's supplements

to PAG, and the Pima County Roadway Design Manual ("RDM"), and Arizona and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for Licensee to comply with any law or regulation of the FCC or the ACC to engage in the business activities anticipated by this Agreement, Licensee 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.

SECTION 3. Non-Exclusive Rights/Prior Rights

- 3.1 The rights of County in and to the use of public rights-of-way are forever paramount and superior to Licensee's rights under the License.
- 3.2 This License is not exclusive, and nothing herein contained shall be construed to prevent County from granting other like or similar licenses, grants or privileges to any other person, firm or corporation, or to deny or lessen the powers and privileges granted County under the Constitution and laws of the State of Arizona.
- 3.3 Any and all rights granted to Licensee shall be subject to the prior and continuing right of County to use the ROW exclusively or concurrently, with any other person or persons, and to manage County's own Facilities. Any and all rights to occupy the ROW granted to Licensee shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey, create or vest any real property interest in land to Licensee, including any fee or leasehold interest, easement, or any franchise rights.
- 3.4 Any right or privilege claimed pursuant to this Agreement by Licensee for any use of any public ROW shall be subordinate to: A) any prior or subsequent lawful occupancy or use thereof by the County or any other governmental entity; B) any prior lawful occupancy or use thereof by any other person; C) and to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.
- 3.5 By executing this Agreement, County does not waive any rights that it may have against any Public Service Corporation or other property owner to require that such owners obtain prior approval from the County for such uses of their property or Facilities, or that revenues received by any Public Service Corporation or other property owner from Licensee, by virtue of Licensee's use of their property or facilities be included in the computation of any use agreement fees owed by such Parties to the County.
- 3.6 Nothing in this Agreement shall be construed to prevent the County from abandoning, altering, improving, repairing, or maintaining its facilities and/or the ROW, and for that

purpose to require Licensee, at no expense to the County, to remove, relocate or abandon in place Licensee's Facilities to accommodate the reasonable activities of the County. The County shall not be liable for lost revenues sustained by Licensee, however caused, because of damage, modification, alteration, or destruction of its Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of County facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.

- 3.7 Licensee is further required to comply with all lawful applicable ordinances of Pima County regulating conduct or work within the public rights-of-way, such as ordinances that are now enacted or may be amended or adopted from time to time.

SECTION 4. Notice of Other Users

- 4.1 Licensee may enter into contracts with unrelated third parties ("Users") in the ordinary course of Licensee's business for use or lease of the Facilities within the portions of the ROW subject to this Agreement. User Contracts shall be subject to all requirements and provisions of this Agreement and the following:
- 4.1.1 The identity of such Users must be disclosed to the County prior to any Users' use of the Facilities, but such information will be considered Confidential and Proprietary under applicable law.
- 4.1.2 All Users shall be prohibited from performing any construction, maintenance, repair or other work of any description in the ROW related to the Facilities, unless such Users have an agreement with the County.
- 4.2 Licensee shall cause to comply with this Agreement all persons using the ROW through or under Licensee or this Agreement. Licensee is responsible for any violations of this Agreement by persons using the ROW through or under Licensee or this Agreement.
- 4.3 Licensee shall, sixty (60) days prior to the anniversary of the Effective Date, by written certification signed by an authorized representative of Licensee capable of contractually binding Licensee, certify:
- The number of linear feet of Facilities currently installed in County ROW;
 - Any Other Users as defined in Section 4.1 currently using the Facilities.
- 4.4 Should Licensee lease Dark Fiber or Conduit ("Leased Facilities") to a User within the ROW, Licensee shall inform the County within forty-five (45) business days of the location and length of the Dark Fiber or Conduit route that is being leased through an infeasible right of use agreement or similar contractual arrangement.

Upon twenty (20) days' notice and subject to any applicable confidentiality laws, Licensee shall permit the County and its representatives to inspect Licensee's records or applicable agreements to the extent necessary to confirm compliance with Section 4.4. Licensee shall make such records or agreements available to the County at a mutually convenient location in Pima County. Identification of Leased Facilities will be kept confidential to the extent allowed by law. If there is a public records request for such information, County will contact Licensee to allow an opportunity to seek judicial relief to prevent the disclosure of the lessee's identity or other confidential information.

SECTION 5. Plan Approval, Permits, Inspection and Regulation

- 5.1 For purposes of this Agreement, whenever work is done in the ROW relating to any of the Facilities, Licensee agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all of its Contractors who are involved in the installation, construction, maintenance, repair, location, relocation and any other activity involving Licensee's Facilities subject to this Agreement and that the obligations of this Agreement that are imposed on both Licensee and any of its Contractors, who will be considered Licensee's agents and for whom Licensee will be responsible.
- 5.2 Licensee is responsible for ensuring that its Facilities are constructed, installed, operated and/or maintained in accordance with the County code and established practices with respect to such public ROW and easements, including the receipt of appropriate permits prior to commencing any work and strict adherence to terms and conditions of such permits. This License does not replace the need for permits as required by County, state, or federal entities.
- 5.3 Licensee's use of the public ROW under the control of the County shall be according to plans approved by Pima County Department of Transportation (DOT), provided such approval shall not be unreasonably withheld or delayed. Before beginning any construction for installation of Licensee's Facilities, Licensee is required to, as part of the ROW Use Permit application process, submit a plan of proposed construction to the County Engineer and must not commence any construction until the right-of-way use permit has been approved and issued by County Engineer or their designee.
- 5.4 The Facilities to be constructed, installed, operated, maintained, upgraded and removed hereunder, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within said public ROW. Any phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Facilities shall be subject to regulation by the County Engineer, or their designee.
- 5.5 Licensee and its agents shall be subject to the County's exercise of such police, regulatory and other powers as it now has or may later obtain, and Licensee may not waive the application of the same. County shall have continuing jurisdiction and supervision over

any Facilities located within or on public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the County Engineer or designee to interpret, administer and enforce the provisions of this Agreement.

- 5.6 No Facilities shall be installed, constructed, located on, or attached to any property within the County ROW, Public Utility Easements and/or other easements dedicated to the County until Licensee has applied for and received approved permits. Licensee and its Contractor(s) shall comply with all other provisions of the Pima County Code and regulations, including but not limited to Pima County Code Chapter 10.44 and 10.50. All rights hereunder are granted under the express condition that the County shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Licensee's use of the public ROW as may be deemed best for the public interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW.
- 5.7 Licensee shall submit the applicable permit application(s) together with the details, plans and specifications for County review and approval, and pay all applicable application, Fiber License Fees, review and inspection fees due and payable prior to any and all construction work performed pursuant to the rights granted under this Agreement. Licensee and/or its Contractor(s) shall abide by all stipulations of all licenses and permits issued. If Licensee desires to change the location of any portion of the infrastructure, including any related Facilities or Equipment set forth in the initial permit application, Licensee shall apply for and obtain approval for an amendment to the permit prior to installation or construction.
- 5.8 County may issue reasonable policy guidelines to all licensees/users to establish procedures for determining how to control issuance of ROW use permits to multiple licensees/users for the same segments of their Facilities. Licensee agrees to cooperate with the County in establishing such policies and comply with the procedures established by DOT to coordinate the issuance of multiple ROW use permits in the same segments.
- 5.9 Any new Conduit or other Facilities placed in the ROW will be constructed underground using industry standard practices and in full compliance with PAG Standard Specifications and Details for Public Improvements sponsored and distributed by PAG, the County's supplements to PAG, and the RDM.
- 5.10 The County shall have the right to inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it shall find necessary to meet County standards as set forth in the RDM and the PAG Standard Specifications and Details for Public Improvements and the County Supplements thereto and to ensure compliance with the terms of this Agreement and other pertinent provisions of law.
- 5.11 Any new Facilities shall be installed as agreed upon by Licensee and the County. If

portions of this project take place on major arterial streets in County, Licensee and County will work to minimize the inconvenience to County citizens and others who use those major arterial streets impacted by the project by developing segments of the project to be completed in sequence.

- 5.12 Any Facilities to be constructed, installed, operated and maintained under this Agreement shall be located or relocated to interfere as little as possible with traffic, existing utilities, or other authorized uses existent at the time of Licensee's authorization, on, over, under or through said streets and public rights-of-way. Licensee shall not install, operate, or allow the use of equipment, methodology or technology that may or would unreasonably interfere with the optimum effective use or operation of County's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying receiving or transmitting equipment). If such unreasonable interference should occur, Licensee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Licensee takes corrective measures to alter the Facilities to eliminate such interference. Any such corrective measures shall be made at no cost to County. Licensee shall be responsible to ensure compliance with this Agreement by all persons using the ROW through or under Licensee or this Agreement.
- 5.13 Co-location. Licensee's installation of the Facilities shall be reasonably coordinated with other Public Service Corporations and County to accommodate opportunities for common installation along with Licensee's route as set forth in this Agreement. All installations of cable and/or fiber shall be in Conduit or Innerduct as reasonably approved by DOT and Pima County Information Technology ("IT"). Provided, however, nothing herein shall require Licensee to incur any additional expense to accommodate common installations.
- 5.14 The exact placement and location of any additional Facilities must be approved by County through the permit process. If a street opening in new pavement or resurfaced pavement cannot be avoided, Licensee must follow the County's Standard Operating Policy and Procedure 670.16 No Cut Pavement Moratorium.
- 5.15 Licensee shall provide and identify a representative, such as a project manager, who shall be the contact person for the County during any construction periods.

SECTION 6. Location of Facilities

- 6.1 Arizona 811 (formerly Arizona Blue Stake). Licensee and its Contractor(s) shall comply with A.R.S. § 40-360.21 through A.R.S. § 40-360.32 by participating as a member of the Arizona 811 with the necessary records and persons to provide location service of Licensee'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 County Engineer, or their designee, prior to Licensee's first ROW permit application.

- 6.2 Pursuant to A.R.S. § 40-360.30, and any other applicable law, Licensee is required to maintain installation records that identify all of Licensee's facilities by type and location within public rights-of-way. Licensee will make such installation records available to County upon County's request and without cost to County. County agrees that records of the location or design of Licensee's facilities may be defined as critical infrastructure by the federal government and as such, County agrees that records of the location or design of Licensee's facilities are proprietary to Licensee and County will not release nor make available any records to any outside party without the express, written permission of Licensee.
- 6.3 As a condition of this License, the Licensee hereby agrees to have and maintain precise, verifiable, and up-to-date maps with horizontal and vertical location information of any of its facilities or equipment located in the public right-of-way, and to make this information available to the County in an ESRI-compatible mapping format.

SECTION 7. Damage to Public Property

- 7.1 In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of Licensee's Facilities is required or permitted under this Agreement, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public or private improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, Licensee, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the County Engineer or their designee. Upon receipt of written notice from County, Licensee will make needed changes or corrections to Facilities within 120 days. Additional time may be granted by mutual agreement of County and Licensee.
- 7.2 County shall have the right to make, or cause such changes or corrections to be made by a qualified contractor at the expense of Licensee if Licensee fails to make such changes or corrections as set forth in the notice, or to correct any damage to any public street, alley, highway or ROW within unincorporated limits of Pima County caused directly or indirectly by Licensee, its agents, employees or contractors.
- 7.3 Should any changes, corrections or repairs be deemed an emergency by County, Licensee, upon receipt of notice of such an emergency, must make such changes, corrections or repairs deemed necessary by County to provide for health and safety concerns.
- 7.4 In the event Licensee does not make the necessary changes, corrections or repairs within a reasonable period of time, County may make or cause such changes, corrections or repairs to be made by a qualified contractor at the expense of Licensee. Any expenses

incurred for such changes, corrections or repairs will be due and payable within 30 days of written demand by County to Licensee.

- 7.5 County is not liable to Licensee for any costs of relocation, replacement, repair or abandonment of Facilities of Licensee in public Rights-of-Way or lost revenues, sustained by Licensee because of damage, modification or alteration to or destruction of its facilities in the ROW, except as provided by Arizona law or otherwise provided herein, and to the extent consistent with A.R.S. §§ 12-820.01 and 12-820.02.

SECTION 8. Public Emergency Disruption by County

- 8.1 County shall have the right, because of a Public Emergency, to sever, disrupt, remove, tear out, dig-up or otherwise damage and/or destroy Facilities of Licensee without any prior notice to Licensee, if the action is deemed necessary by either the County Administrator or their designee. In such event, neither the County nor any agent, Contractor or employee of County shall be liable to Licensee, its Contractors or its customers or third parties for any harm so caused to them or the Facilities, unless such damages are caused by County's gross negligence or willful misconduct. When practical and if possible, County will consult with Licensee in advance to assess the necessity of such actions to minimize to the extent practical under the circumstances damage to and disruption of operation of the Facilities. County shall inform Licensee of any actions taken. Licensee shall be responsible for repair at its sole expense of any of its Facilities damaged pursuant to any such action taken by County.

SECTION 9. Public Safety/Public Emergency

- 9.1 If any of Licensee's Facilities or activities present any immediate hazard or impediment to the public, to the County, to other improvements or activities within or outside of the route area(s), or to County's ability to safely and conveniently operate the ROW or perform County's utility, public safety and/or other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with County's request to secure the route area, and otherwise cooperate with County at no expense to County to remove any such hazard or impediment.
- 9.2 In the event of a Public Emergency, neither the County nor any agent, Contractor or employee of the County shall be liable to Licensee or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the County or its agents, Contractors or employees in responding to such Public Emergency, unless such damages are caused by County's gross negligence or willful misconduct. When practical and if possible, County will consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved, or the Facilities involved.

SECTION 10. Effective Date and Validity of Agreement

- 10.1 This Agreement is effective upon signature by Licensee and the execution by the Pima County Board of Supervisors.
- 10.2 Licensee acknowledges that, as a condition of acceptance of this Agreement, Licensee had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. Licensee has reviewed County's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering the same, Licensee acknowledges and accepts the right and authority of County to execute this Agreement and to enforce the terms herein.

SECTION 11. Term of Agreement

- 11.1 The original term of this License and Agreement shall terminate 11:59 p.m. on June 30th following the 5th anniversary of this Agreement, which is the date of approval of this Agreement by the Board of Supervisors, unless sooner terminated as set forth in this Agreement. So long as Licensee is not in default hereunder, Licensee may request a renewal of this License for one (1) additional five-year term. Any request for renewal must be submitted to County in writing no less than sixty (60) days prior to the expiration of the then-current term. Renewal is not automatic and shall be subject to: (i) County's approval in its sole discretion, and (ii) Licensee's execution of the County's then-current form of license agreement, which may contain terms and conditions that differ from this License. Nothing in this Section obligates County to renew this License.

SECTION 12. Modification, Renewal, Extension

- 12.1 If Licensee wishes to renew its License and Agreement and continue using the ROW, then at least one hundred and eighty (180) days prior to the expiration of this Agreement thereof, Licensee shall apply to the County for a new License and Agreement in accordance with the then existing federal, state, and local laws and regulations. Licensee shall pay the applicable fee for any such renewal.
- 12.2 Licensee shall pay to County the applicable fee at the time of the submission of the application.
- 12.3 Licensee understands that the County may adopt future policies, code amendments and/or fee schedules relating to Facilities located within the ROW, which may replace in its entirety the current fees and other costs imposed upon Licensee under this Agreement. Licensee acknowledges the right of the County to adopt and implement such lawful future policies, code amendments and/or fee schedules.
- 12.4 If Licensee's Facilities remain in the ROW, and Licensee continues to use such Facilities beyond the expiration of the License and Agreement's term, and pay the annual fees, the License and Agreement shall be in a Holdover Term, subject to the terms and conditions

of this Agreement. Such Holdover Term, however, shall not exceed sixty (60) days beyond the expiration of the term and no permits will be issued to Licensee by the County until a new License Agreement has been approved by the Pima County Board of Supervisors.

- 12.5 Failure by Licensee to have an Agreement to use the ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the County to Licensee and the liquidated damages amount set forth in Section 21 shall apply. If, however, Licensee has timely filed its application and is in active negotiations with the County prior to the expiration of the Agreement, the County may, in its sole discretion, grant, extend, or take no action on permits issued to Licensee prior to the expiration of the Agreement.

SECTION 13. Payments

- 13.1 By entering into this Agreement, neither party waives any current or future rights reserved under the Arizona Revised Statutes and the Telecommunications Act of 1996, including but not limited to, those rights set forth in Sections 253(c), reserving the County's right to manage the public ROW and to require fair, non-discriminatory and reasonable compensation from Licensee for use of the public ROW.
- 13.2 Licensee shall be solely responsible for payments to County as follows:
- 13.2.1 Application Fee. Licensee shall pay County an application fee of \$3,000.00 for the administrative costs involved in the issuance of this Agreement, which shall be due at the time of the submittal of the application.
- 13.2.2 Fiber License Fee. Pursuant to A.R.S. § 9-583 and Section 4.4, certain portions of the Licensee's Facilities in the ROW pursuant to this Agreement are subject to an annual fee ("Fiber License Fee") based on the number of linear feet of Facilities in the ROW. Where applicable, the annual Fiber License Fee is \$2.15 (two dollars and fifteen cents) per linear foot, which shall be adjusted annually as provided in Section 13.2.2.1.
- 13.2.2.1 Commencing on the first anniversary date of this Agreement and continuing through the initial term and/or Holdover Term, the Fiber License Fee shall be escalated annually on the anniversary based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for all Items (CPI). If there is no increase in the CPI or if the CPI has decreased, the Fiber License Fee shall remain what it was for the prior year.
- 13.2.2.2 Upon each anniversary of this Agreement, any Fiber License Fee owed will be adjusted as provided by Section 13.2.2.1 above, and payment made by as

required by Section 13.3.

- 13.3 Applicant agrees to pay the standard Fiber License Fee as part of this agreement. Per linear foot fees are due and payable upon permit issuance, to be pro-rated through the end of the current term year. For any annual payment(s) owed, Licensee shall make such payment(s) to the County within thirty (30) business days of the anniversary date of this Agreement.
- 13.4 Permit Fees. Licensee shall pay all applicable construction permit fees to place Facilities in the ROW, which includes charges for ROW permit applications, issuance, inspection, testing, plan review and any other fees adopted by County and applicable to persons doing work and/or excavating in the County's ROW pursuant to Title 10 of Pima County Code and the Procedures for the Issuance of Right-of-Way Permits.
- 13.5 Damage Fees. Licensee shall pay any reasonable costs associated with any damage caused to the ROW or public property per Title 10 of Pima County Code and Section 7 of this Agreement.
- 13.6 Any checks shall reference the contract number and be sent to:

Pima County Real Property Services
201 N. Stone Ave., 6th Floor
Tucson, AZ 85701
- 13.7 Licensee agrees that if it fails to pay any amounts owed to the County by the time prescribed for payment, Licensee shall pay interest on the amounts owed, at the rate of 1% per month. If the dispute is later resolved in favor of the County, Licensee will owe the interest on the amount determined to be owed.

SECTION 14. Insurance

- 14.1 Licensee shall provide the County with and maintain in full force throughout the term of this License by the Licensee or Licensee's assignees liability insurance. This License shall terminate if insurance lapses. County reserves the right to require additional insurance at County's sole discretion. The insurance policy should comply as follows:
 - 14.1.1 Commercial General Liability insurance; including coverage for contractual liability; products and completed operations; and explosion, collapse, and underground; with limits not less than \$5,000,000, combined single limit.
 - 14.1.2 Commercial Automobile Liability insurance covering owned, non-owned, and hired vehicles used in connection with this license, with limits not less than \$5,000,000.
 - 14.1.3 Primary Insurance: The Licensee's policies shall stipulate that the insurance afforded

the Licensee shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be non-contributory.

- 14.1.4 The Commercial General Liability insurance and Commercial Automobile insurance policies shall be endorsed to include Pima County as an additional insured.
- 14.1.5 Upon written request the insurer, broker, or agent shall provide certificates of insurance indicating the required insurance coverage and endorsements (or a letter certifying self-insurance), or copies of the insurance policy declaration pages and required endorsements, to Pima County Real Property Services. The certificate of insurance shall be reasonably similar to and contain at least the same information as an ACORD form certificate of insurance. All insurance policies shall include a 60-day notice of cancellation or material change of coverage endorsement. Deductibles or retention levels exceeding \$10,000 per claim shall be declared.
- 14.1.6 Licensee shall immediately forward a copy of any notice of cancellation or material change of coverage to Pima County Real Property Services in addition to any notice provided by the insurer or its representative.
- 14.1.7 Licensee shall be solely responsible for all premiums, deductibles, or self-insured retentions due and payable for insurance required in this paragraph.
- 14.1.8 Notwithstanding anything to the contrary herein, Licensee may satisfy any and all required coverages hereunder through liability insurance, umbrella insurance, self-insurance, or a combination thereof.

SECTION 15. Indemnity

- 15.1 All costs associated with the License and any use of public right-of-way shall be at the sole expense of Licensee. Licensee assumes responsibility and liability for any injury or damage to the above-described right-of-way or to any person while using the above-described right-of-way caused by or arising out of the exercise of this License. To the fullest extent allowed by law, the Licensee shall indemnify, defend and hold the County, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the Licensee, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this License. The obligations under this Section shall not extend to the negligence or intentional misconduct of the County, its agents, or employees. If County is sued in any court by any person, firm, association or corporation to recover damages for injuries or death to person or property on account of the construction, installation,

operation, maintenance, repair or replacement of Facilities of Licensee, Licensee shall indemnify County, pay any resulting final judgments, and shall at the option of County be made a party to any such court proceeding. This provision shall not bar Licensee from claiming contribution for such injuries, death, damages and defense costs after, and to the extent, County is found liable by a court of competent jurisdiction for such damages, injuries or death by reason of acts or omissions of County or its employees, servants or agents. This indemnity shall survive the termination of this License.

SECTION 16. Limitation of Liability

- 16.1 The County and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operations of Facilities or the provision of services, or for any damages arising out of or materially related to Licensee's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the County, its officers, agents, elected or appointed officials, employees, departments, boards and commissions.
- 16.2 Licensee also agrees that it shall have no recourse whatsoever against the County or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the County because of the enforcement of this Agreement or because of defects in this License or Title 10 of Pima County Code.
- 16.3 Licensee shall assume the risk of and hereby relinquishes any claim against the County in connection with any final, non-appealable determination by a court of competent jurisdiction that the County lacked the current statutory authority under Arizona law to issue this License.

SECTION 17. Transferability of License and Agreement

- 17.1 This License is personal to Licensee and any transfer, or assignment can only be made to an entity entitled to receive a telecommunications license.
- 17.2 If such an entity is qualified to have a telecommunications license, Licensee may transfer or assign this License and Agreement to any affiliate entity under common corporate control, or to the surviving entity in the event of a merger or acquisition of Licensee without County's prior consent. Licensee shall, however, give notice to the County of any such transfer or assignment within sixty (60) days of a completed transfer or assignment under this Section.
- 17.3 Any transfer or assignment for reasons other than provided for in Section 17.2 above shall require the written approval of the County Board of Supervisors.

- 17.4 No application for a transfer or assignment of this License and Agreement shall be granted unless the proposed transferee or assignee agrees in writing that it will abide by and accept all terms of the License and Agreement and all local, state and federal laws and regulations and that it will assume, and is presently capable of assuming, all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of Licensee.
- 17.5 Approval by the County of a transfer or assignment of this License and Agreement does not constitute a waiver or release of any of the rights of the County, whether arising before or after the date of the transfer or assignment.
- 17.6 Transfer Remedies. When consent is required, any transfer without County's written consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this License and Agreement. County may, in its sole discretion and in addition to all other lawful remedies available to County under this Agreement or otherwise, and in any combination, terminate this License and/or Agreement, collect any fees owed from Licensee and/or declare the transfer to be void, all without prejudicing any other right or remedy of County under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive County's written consent.
- 17.7 Transfer Fee. Licensee shall pay to County in advance the sum of \$1,000.00 as a nonrefundable fee for legal, administrative and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer, whether or not County grants such request.

SECTION 18. No Third-Party Beneficiaries

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

SECTION 19. Licensee's Records

- 19.1 During the entire term of this Agreement, Licensee shall keep records and provide information to County regarding the following:
- 19.1.1 Licensee shall maintain As-Built Drawings of its Facilities located within the ROW and furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current County electronic mapping format as specified by the County) and in hard copy form. Upon completion of new or

relocation construction of underground Facilities in the ROW, Licensee shall create and maintain precise, up-to-date maps of any of its routes and any above ground equipment located in the ROW and precise location information and will make this information available to the County upon the installation of any new Facilities.

- 19.1.2 Information relating to any Facilities on portions of the route that are not exempt from a fee imposed for occupation of the ROW.
- 19.1.3 Information reasonably relating to this Agreement and/or to County's or Licensee's rights or obligations under this Agreement.
- 19.1.4 All persons with whom Licensee contracts to use Licensee's Facilities within the County to provide Telecommunications Services.
- 19.1.5 In the event Licensee fails to supply records in the County specified format, and there is a cost to the County in converting Licensee-provided files, Licensee will be responsible for the conversion costs and will pay such costs within thirty (30) days of the date of the bill from the County invoicing the amount due. However, before the County incurs any cost to convert Licensee-provided files, it will notify Licensee that it cannot access the records that had been provided. If within fourteen (14) days, Licensee has not either provided compatible records or provided the County an agreeable date by which such updates will be received by County, County will convert the incompatible updates unilaterally.
- 19.2 Licensee reserves the right to seek appropriate confidentiality protections for any information to be produced to County.
- 19.3 If necessary for the County to determine Licensee's compliance with the terms of this Agreement or other applicable law, Licensee shall provide relevant documentation as requested by the County and respond to questions in a format and timeframe to be decided by the Parties based on the nature of the request. Such records shall be made available to County at a mutually convenient location within Pima County or delivered electronically as may be appropriate. Licensee shall also require its employees, agents, and accountants to give their cooperation and assistance in connection with County's access to such records.
 - 19.3.1 Such documentation may include information on the type of services Licensee is offering its customers (but not necessarily information disclosing any particular service being provided to a specific customer) and/or the financial information used in calculating any payments or taxes due to the County under this Agreement. If Licensee determines that to respond to County's request for documentation, it must reasonably provide Proprietary Information, Licensee shall so mark such documentation as "Confidential."

- 19.3.2 Proprietary Information disclosed by Licensee shall mean any document or material clearly identified as "Confidential." Such Proprietary Information shall include but not be limited to any customer names and lists, financial information, technical information, or other information clearly identified as "Confidential" pertaining to services provided to its customers.
- 19.3.3 Proprietary Information disclosed by Licensee to the County or its constituent departments shall be regarded as Proprietary as to third parties. If the County receives a request to disclose such information, the County shall notify Licensee of such request and allow Licensee a reasonable opportunity to defend its information from disclosure.
- 19.3.4 Information in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the County shall only disclose those portions within the public domain.
- 19.3.5 Notwithstanding any provision in this Agreement, Licensee acknowledges and understands that the County is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 et seq).
- 19.4 Upon request and subject to any necessary redaction for confidentiality requirements, Licensee shall provide to County copies of any communications and reports submitted by Licensee 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.

SECTION 20. Penalties for Violation of Terms

- 20.1 County may pursue any remedy at law, including but not limited to stop work orders, injunctive relief, civil trespass, and withholding other County permits and authorizations until Licensee complies with the terms of the Agreement or the applicable law.
- 20.2 Such remedies are cumulative and may be pursued in the alternative.
- 20.3 Neither party will be liable under this Agreement for lost revenues or indirect, special, incidental, consequential, exemplary, or punitive damages, even if the party knew or should have known that such damages were possible and even if direct damages do not satisfy a remedy.

SECTION 21. Liquidated Damages for Violations

- 21.1 Licensee's obligation to pay liquidated damages does not in any way detract from Licensee's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Licensee's obligation to pay liquidated damages.

- 21.2 Licensee understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of Title 10 of Pima County Code will result in damage to the County, 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 as determined per Section 21.3 of this agreement.
- 21.3 Assessment. If the County Engineer, or their designee, concludes that Licensee may be liable for liquidated damages, the County Engineer, or their designee, shall issue to Licensee a Notice of Intention to Assess Liquidated Damages as specified in Pima County Code 5.04.350 and allow Licensee an opportunity to cure in the time period specified in Sections 22.2 through 22.3. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. Licensee shall pay the liquidated damage amount within ten (10) business days of receipt of notification.
- 21.3.1 If, however, the liquidated damages exceed \$5,000.00 (Five Thousand Dollars), then the following shall apply:
- 21.3.2 Licensee shall have thirty (30) days of receipt of such notice to pay the liquidated damage amount or give County notice contesting the assertion of noncompliance.
- 21.3.2.1 If Licensee contests the County's assertion of violation or fails to respond to the County's notice of intent to assess liquidated damages, County shall schedule a public hearing to determine whether the liquidated damages were properly assessed. County shall provide Licensee with at least ten (10) business days' notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, Licensee will be given the opportunity to be heard and present evidence. If the result of the hearing is that Licensee is responsible for the liquidated damage amount, then the amount determined at the hearing will be due ten (10) days after the hearing decision is announced.
- 21.3.2.2 Licensee may appeal the outcome of the hearing to an appropriate court, which shall have the power to review County's decision "de novo." Such appeal to the appropriate court must be made within sixty (60) days after the issuance of County's hearing decision. Otherwise, the outcome of the hearing shall be final and conclusive.
- 21.3.2.3 Each party shall pay its own costs in the event of a hearing and/or appeal as described in this Section.

SECTION 22. Revocation/Termination

- 22.1 The License granted hereunder may be revoked and/or the Agreement terminated prior to its date of expiration by the County for the following reasons:

- 22.1.1 Licensee fails to comply with the material terms and conditions of the Agreement or applicable law, including but not limited to failing to maintain any insurance, and/or a performance bond.
- 22.1.2 Licensee fails to make payments in the amounts and at the times specified in this Agreement after a final determination that the payments were owed.
- 22.1.3 Licensee ceases doing business in Pima County.
- 22.1.4 Licensee fails to provide current, accurate as-built plans and maps upon request showing the location of all Facilities installed or constructed in the County.
- 22.1.5 Licensee is or becomes insolvent or is a party to a voluntary or involuntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the County, threaten the financial viability of Licensee as a going concern, or if there is any similar action that affects Licensee's capability to perform its obligations under this Agreement.
- 22.1.6 Licensee fails to obtain or maintain any licenses, permits, or other government approvals pertaining to the ROW pertaining to the ROW.
- 22.1.7 A court has issued an injunction that in any way prevents or restrains Licensee's use of any portion of the ROW and remaining in force for a period of at least 30 consecutive days.
- 22.2 Before terminating the Agreement under Sections 22.1.1, 22.1.2, 22.1.4, and 22.1.6, upon receipt of written notice from County that this License is to be terminated or revoked for cause, Licensee will be given sixty (60) days to cure or remedy the reason(s) provided in the written notice from County. County has the right to extend such cure period. If Licensee does not cure the reason(s) for termination within the 60-day time period, Licensee is to remove its facilities from the right-of-way at no expense to County, and to the satisfaction of County. Licensee must restore the right-of-way to the condition mutually agreed upon. If Licensee does not restore the right-of-way within sixty (60) days allotted, County may restore the right-of-way at the expense of Licensee. Any expenses incurred will be due and payable within thirty (30) days of written demand by County to Licensee.
- 22.3 The County need not provide a sixty (60) day cure period prior to termination if the County finds that the defect in performance under the Agreement is due to intentional misconduct, is a violation of criminal law, or is a part of a pattern of repeated and persistent violations where Licensee has already had notice and opportunity to cure.

- 22.4 The County Engineer or its designee has the authority to terminate, subject to Licensee's right to notice and cure where provided, this Agreement.
- 22.5 Termination by Mutal Agreement. This Agreement may be terminated prior to its date of expiration by Licensee by providing the County with ninety (90) days written notice and only upon making arrangements satisfactory with the County Engineer or their designee, to remove all Licensee's Facilities from public property and the ROW

SECTION 23. Non-use/Abandonment of the Facilities

- 23.1 An "Abandoned Facility" means a Facility no longer in service or physically disconnected from a portion of an operating Facility or from any other Facility that is in use or still carries service. If Licensee ceases to provide services or abandons use of any of its Facilities, or upon cancellation or termination of the Agreement, Licensee shall notify the County, within sixty (60) days of cessation, abandonment, cancelation or termination, of its intent to permanently abandon the Facilities and may, subject to the County's approval, permanently abandon the Facilities in place. In lieu of permanent abandonment, the County may require Licensee, to the reasonable satisfaction of the County and without cost or expense to the County, to promptly remove the Facilities and to restore the public property and ROW to a reasonable condition under the supervision of the County.
- 23.2 Upon permanent abandonment, if the County does not require removal, Licensee shall submit to the County a bill of sale and/or other instruments reasonably necessary for transferring ownership to the County. Any such Facilities, which are not removed as required by the County within ninety (90) days of either such date of termination or cancellation or of the date the County issued a permit authorizing removal, whichever is later, automatically shall become the property of the County. Licensee will notify the Arizona 811 Center to record the Facilities that have been abandoned.
- 23.3 Title to any and all personal property installed by Licensee upon the ROW that is not removed during the period set forth in Section 23.2 shall automatically vest in County.

SECTION 24. Cancellation for Conflict of Interest

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

SECTION 25. Notice

- 25.1 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, regular mail or electronic mail, addressed as follows:

COUNTY:

Pima County

ATTN: Real Property Services

201 N. Stone Ave., 6th Floor

Tucson, AZ 85701

Email: george.andros@pima.gov

COMPANY:

WANRack, LLC

ATTN: Legal Department

4550 West 109th Street

Overland Park, KS, 66211

Email:

With copies to:

Pima County

ATTN: Office of Digital Inclusion

201 N. Stone Ave., 5th Floor

County AZ 85701

Email: michelle.simon@pima.gov

With copies to:

Gateway Fiber, LLC

ATTN: Chief Financial Officer

2342 Technology Drive

O'Fallon, MO, 63368

Email: craig.ceranna@gatewayfiber.com

- 25.2 Notices shall be deemed sufficiently given and served upon the other party if delivered personally or the first business day after deposit if sent by private delivery systems and the fifth business day after deposit in U.S. Mail.
- 25.3 Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.
- 25.4 Licensee shall notify the County within 10 business days of any change in mailing address.

SECTION 26. Governing Law

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

SECTION 27. Partial Invalidity

- 27.1 If any Section, paragraph, subdivision, clause, phrase or provision of this Agreement shall become void, invalid, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part judged to be invalid, unenforceable or preempted.

SECTION 28. Amendment

- 28.1 The Parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties.

SECTION 29. No Warranty

- 29.1 LICENSEE ACKNOWLEDGES AND AGREES THAT COUNTY DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS ROW OR THE PREMISES SURROUNDING THE SAME, AND LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY COUNTY ROW.

SECTION 30. Non-Waiver

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

SECTION 31. Remedies Not Exclusive

- 31.1 The remedies set forth in this Agreement are not exclusive. Election of one remedy does not preclude the use of other remedies.

SECTION 32. Force Majeure

- 32.1 With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon Licensee, 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 is beyond its reasonable control.

SECTION 33. Dispute Resolution

- 33.1 In the event of a dispute between the Parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing parties, the disputing parties shall mutually agree upon the services of one (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

SECTION 34. Exhibits

- 34.1 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 35. Survival of Liability

- 35.1 All obligations of Licensee and County hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement.

SECTION 36. Entire Agreement

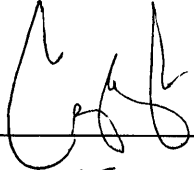
- 36.1 This document constitutes the entire agreement between the Parties pertaining to the subject matter it addresses, and this Agreement supersedes all prior or contemporaneous agreements and understandings, oral or written.

SECTION 37. Execution

- 37.1 This Agreement may be executed in any number of counterparts and by the different signatories hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. This Agreement may be executed by facsimile signature and delivered by facsimile transmission. Each Party certifies that he/she has the requisite authority to sign and bind each Party to this agreement.

LICENSEE:

By: _____



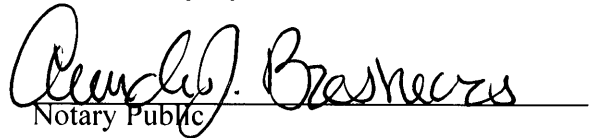
Title: _____

CFO

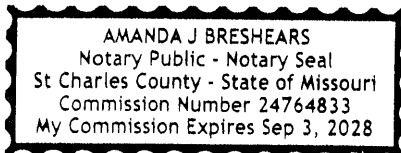
State of Missouri)

County of St. Charles)ss

This instrument was acknowledged before me this 22nd day of January, 2025,
by Craig Ceranna, as CFO of
WAVRACK, LLC, a Delaware LL company.


Notary Public

My Commission Expires: Sep. 3, 2028



COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:

Jennifer Allen, Chair, Board of Supervisors

Date

ATTEST:

Melissa Manriquez, Clerk of Board

Date

APPROVED AS TO CONTENT:

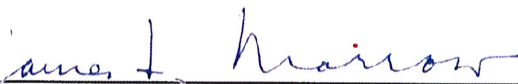
 For Carmine DeBonis

Director, Real Property Services

 2/8/2024

Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:



James Morrow, Deputy County Attorney