

**COMMUNICATIONS INFRASTRUCTURE USE AGREEMENT
BETWEEN CENTURYLINK, INC.
AND THE CITY OF TEMPE**

C2013-

This **COMMUNICATIONS INFRASTRUCTURE USE AGREEMENT** (“Agreement”) is entered into as of this ____ day of February, 2013 (the “Effective Date”), by and between Qwest Corporation, d/b/a CenturyLink, QC (“CenturyLink”), a corporation organized and existing under the laws of the State of Colorado and the City of Tempe (“City”), an Arizona municipal corporation. CenturyLink and the City are each referred to as a “Party” and are collectively referred to as the “Parties”.

RECITALS:

- A. WHEREAS, City is the property owner of Tempe Diablo Stadium and certain surrounding property (“Stadium Property”) located at 2200 West Alameda Drive, Tempe Arizona, and;
- B. WHEREAS, City owns public street and alley right-of-way and public utility easements within the boundaries of the City of Tempe; and
- C. WHEREAS, City owns certain communications conduit and fiber on the Stadium Property; and
- D. WHEREAS, CenturyLink wishes to obtain from City the right to access and use certain conduit(s) owned by the City to install 24 strands of fiber optic cable in exchange for granting to the City ownership and title to those 24 strands of fiber placed by CenturyLink in City conduit(s) on the Stadium Property; and
- E. WHEREAS, CenturyLink wishes to use up to 8 strands of that fiber in the City conduit(s) to service its customer(s) and to connect between City communications infrastructure and CenturyLink vaults; and
- F. WHEREAS, CenturyLink agrees to the terms and conditions set forth herein when using the particular City communications conduit and fiber infrastructure routes as identified in Exhibit A (attached hereto and incorporated herein); and
- G. WHEREAS, CenturyLink has agreed to comply with public property use requirements that the City has established and may establish from time to time, including the need to secure any applicable permits that may be needed;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties hereby agree as follows:

ARTICLE 1: DEFINITIONS

The following terms, whether in the singular or in the plural, when used in this Agreement and initially capitalized, shall have the meaning specified:

Agreement: This Communications Infrastructure Use Agreement.

Authorizations: All legally required governmental or municipal approvals and authorizations; all legally required right-of-way, easement and pole attachment agreements; and all lawful leases, licenses, consents or other agreements necessary for CenturyLink to construct, install, maintain and repair Conduits and Fiber identified in this Agreement.

Bill Of Sale: The itemized receipt and conveyance of the 24 fiber strands and associated inner duct and panel provided and installed on the Stadium Property by CenturyLink to the City as identified on Exhibit A.

City Conduit(s): Conduit(s) or inner duct(s) or inter duct(s) collectively, or separately, as the context requires, owned by the City to be used pursuant to this Agreement and identified on Exhibit A.

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

Conduit System: Any combination of ducts, conduits, manholes and handholes joined to form an integrated whole.

Contractor: 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 CenturyLink Contractors for the performance of services or provision of goods relating to this Agreement.

Duct: A single enclosed tube, pipe or channel for enclosing and carrying cables, wires, and other facilities.

Effective Date: The date of this Agreement set forth in the opening paragraph.

Fiber: The fiber optic cable(s) installed by CenturyLink, bundled or separately, as the context requires, to be granted to the City pursuant to this Agreement and identified on Exhibit A.

Fiber Infrastructure: The Fiber, inner duct(s), and access panel installed as identified on Exhibit A.

Specifications: Those minimum specifications identified on Exhibit A that the Fiber and Conduits must meet at delivery to the City and during the term of this Agreement.

ARTICLE 2: AUTHORIZED USE OF CITY CONDUITS IN EXCHANGE FOR FIBER

2.1 City hereby agrees to authorize the use of City Conduit(s) by CenturyLink, and CenturyLink hereby agrees to deliver to the City, 24 strands of Fiber, inner duct, and the

access panel CenturyLink installs as identified on Exhibit A in accordance with the terms and conditions of this Agreement.

- 2.2 In exchange for the specific use of City Conduit(s) as identified in this Agreement, CenturyLink will be able to use at least 2 fiber strands (and up to 6 additional fiber strands when needed) for its customer(s) in the locations also identified on Exhibit A.
- 2.3 CenturyLink will have the right to access all necessary vaults, manholes, and handholes for the purposes of installation, maintenance, or repair of the facilities in the City Conduits that have been identified during the term of their third-party agreement(s), subject to the provisions of Article 4 below.

ARTICLE 3: CONDUIT AND FIBER ACCEPTANCE AND DELIVERY

- 3.1 Within thirty (30) days of completion of the installation of the Fiber Infrastructure, CenturyLink will provide City with a Bill of Sale for the Fiber Infrastructure in the form of Exhibit B.
- 3.2 The City may elect to conduct and complete acceptance tests on the Fibers installed and to be delivered to the City within ten (10) days after such delivery. If the acceptance tests show that the delivered Fibers failed to meet the Specifications set forth in Exhibit A, then CenturyLink shall, upon receiving a notice of deficiencies, be responsible for the timely completion of any work or installation required in order to cure such deficiencies.
- 3.3 CenturyLink acknowledges that the City Conduits are offered for use 'as-is' and there are no expectations as to the condition or usability of the City Conduit System. City is not expected to upgrade a particular Conduit or inner duct being utilized by CenturyLink, except for required maintenance as set forth in Article 6.
- 3.4 At its own expense, CenturyLink may make improvements to the City Conduit system on the Stadium Property after obtaining all appropriate Authorizations.

ARTICLE 4: SCHEDULE, ACCESS AND ESCORT

4.1 Except in the case of an emergency (in which case reasonable notice shall suffice) CenturyLink must notify the City forty-eight (48) hours in advance to schedule access to the Stadium facility itself, and for City to provide an escort. City will provide escort service at no cost.

4.2 Escort services will be requested through contacting the City's Network Operations Center (NOC) at the telephone numbers referenced in Section 6.5 hereof. CenturyLink must obtain City's prior approval, which shall not unreasonably be withheld or delayed, of any contractor that will be installing fiber in the City Conduit or that will be installing access manholes or handholes to the City Conduit. CenturyLink will obtain all appropriate Authorizations prior to beginning any work or performing any maintenance.

ARTICLE 5: TERM

Unless otherwise terminated by the Parties under Article 9, the term of this Agreement that allows CenturyLink to use at least 2, but also up to 6 additional fibers strands (when needed) in the City Conduit system on the Stadium Property shall be for as long as CenturyLink has a business need associated with providing services to the Stadium Property via the route specified on Exhibit A.

ARTICLE 6: REPAIR, MAINTENANCE AND CONTINUITY

6.1 City shall use commercially reasonable efforts to cause the City Conduit identified herein to continue to meet the Specifications during the term of this Agreement (including extensions). City shall perform all routine and emergency maintenance and repairs, all “one-call” responses and all cable locate services for the City Conduit.

6.2 Routine Maintenance. Routine Maintenance and repair of the City Conduit system (including the Conduit) shall be performed by or under the direction of the City. Routine Maintenance will include a “Call Before You Dig” program for all related cable and conduit locates and City shall perform other reasonable routine maintenance in accordance with its written procedures and common industry practices. Any maintenance or repair function (excluding emergency repairs and maintenance covered by section 6.3) performed by City on City Conduit which will or could affect service provided in the City Conduit will be coordinated and scheduled with CenturyLink as practical and feasible.

6.3 Emergency Maintenance. Within two (2) hours after City receives a trouble report of imminent or actual failure, interruption or impairment of its City Conduit system identified herein, City shall commence all commercially reasonable efforts to repair such failure, interruption or impairment to cause the City Conduits to meet the City’s requirements. At a minimum, such commercially reasonable efforts shall include dispatching at least one service technician (or more if commercially reasonably prudent to do so) to the source of the reported trouble.

A. If City fails to (i) so commence efforts within two (2) hours, or (ii) restore the City Conduits to the City’s requirements within six (6) hours after the trouble report, then CenturyLink may, but shall not be obligated to, effect reasonable repair or replacement to restore the City Conduit to the City’s requirements. City shall reimburse CenturyLink for all actual costs and expenses incurred to restore the City Conduits to meet City’s requirements and shall remit same within forty-five (45) days after receipt of an invoice.

B. Notices of interruption arising from relocation, condemnations and Force Majeure events (defined in Article 10) shall be treated as trouble reports for purposes of this Article 6.

6.4 City shall allow CenturyLink, following appropriate notification to City Network Operations Center, access to the City Conduit system and manholes to the extent reasonably necessary for the maintenance and restoration services required hereunder; provided however, that CenturyLink in all cases use commercially reasonable efforts to

minimize disruption of City business operation and shall adhere to the City security procedures.

6.5 City's NOC is available from 7 a.m. to 4 p.m. M-F and shall provide an afterhours emergency response call back generally within 20 minutes. Both Parties shall maintain a number to contact personnel with their respective contractors for maintenance and repair activities. The Parties shall dispatch maintenance and repair personnel along the City Conduit system to handle and repair problems detected through the Parties remote monitoring equipment, or otherwise.

A. CenturyLink shall coordinate all maintenance and repair activities with City as follows:

City NOC: 480-350-2900

B. City shall coordinate all maintenance and repair activities with CenturyLink as follows:

CenturyLink NOC: 877-348-9007

ARTICLE 7: INDEMNIFICATION AND EXCLUSION OF CERTAIN DAMAGES

7.1 CenturyLink acknowledges it has sole liability for any of its own Conduit installed in the public right-of-way and for the activities CenturyLink performs within the public right-of-way.

7.2 CenturyLink shall fully indemnify, defend and hold harmless the City, its officers, boards, commissions, elected officials, any tier of contractors or subcontractors, agents, attorneys, representatives, and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities and judgments for damages, including but not limited to, expenses for legal fees, whether suit be brought or not, and disbursements and liabilities incurred or assumed by City in connection with:

- a. Damage to persons or property, in any way arising out of or through the acts or omissions of CenturyLink, its officials, agents, attorneys, representatives or employees;
- b. Requests for relief arising out of any CenturyLink action or inaction which results in a claim for invasion of the right of privacy; for defamation of any person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or of any other right of any person, firm or corporation;
- c. Any and all claims arising out of CenturyLink's failure to comply with the provisions of this Agreement or any federal, state or local law or regulation applicable to CenturyLink;
- d. Any and all disputes arising out of a claim by any party other than the City or CenturyLink wherein damages or other relief is sought as a result of this Agreement.

7.3 If a lawsuit covered by the provisions of Section 7.2 is brought against the City, either independently or jointly with CenturyLink, or with any other person, entity or municipality, CenturyLink, upon notice given by City, shall defend City at the cost of CenturyLink. If final judgment is obtained against the City, either independently or jointly with CenturyLink

or any other defendants, CenturyLink shall indemnify City and pay such judgment with all costs and satisfy and discharge the same.

7.4 City shall cooperate with CenturyLink and reserves the right to participate in the defense of any litigation. CenturyLink agrees to keep the Tempe City Attorney's Office informed of the status and progress of all litigation involving the City that has been tendered to CenturyLink or its insurance carrier.

7.5 The City is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, attorneys, representatives or employees.

7.6 CenturyLink shall make no settlement in any matter identified above without the City's written consent, which shall not be unreasonably withheld. Failure to inform the City of settlement shall constitute a breach of this Agreement and the City may seek any redress available to it against CenturyLink whether set forth in this Agreement or under any municipal, state or federal law.

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

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

7.9 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS), REGARDLESS OF THE FORSEEABILITY THEREOF.

ARTICLE 8: INSURANCE

8.1 Minimum Limits of Insurance. CenturyLink shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain for the mutual benefit of the City and CenturyLink, general public liability insurance against claims for bodily injury, death or property damage, products/completed operations and personal and advertising injury, which insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of CenturyLink or its officers, agents, representatives, employees or servants during all times that this Agreement is in effect. Insurance limits are inclusive of umbrella coverage. CenturyLink shall maintain limits no less than those stated herein for each type of insurance.

8.2 General Requirements. CenturyLink's insurance of the types and amounts required in this section shall be from companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized to do business in the State of Arizona.

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

8.2.2 The insurance coverage, except workers' compensation and professional liability, required by this Agreement, shall include City, its agents, representatives, directors, officials, and employees, as additional insureds, and shall specify that insurance afforded CenturyLink shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by City or its employees shall not contribute to the coverages provided by CenturyLink. This provision and the including of the City as an additional insured shall not be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(ies).

8.2.3. The insurance policies, except workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officials and employees for any claims arising out of CenturyLink's negligent acts or other acts, errors, mistakes, or omissions.

8.2.4. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of CenturyLink who shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. Self-insured retentions of up to \$1,000,000 (One Million Dollars) shall be accepted.

8.2.5 CenturyLink shall be responsible for ensuring that the City is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts below the levels required herein, or any lapse, cancellation or expiration of any of the policies as required by this Agreement.

8.2.6 CenturyLink shall include all Contractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each Contractor. All coverages for Contractors shall be subject to all the requirements stated herein for CenturyLink.

8.2.7 City reserves the right to periodically review said insurance limits to ensure coverage based on market and risk requirements throughout the effective term of this Agreement, upon mutual agreement with CenturyLink.

8.3. Proof of Insurance-Certificates of Insurance.

8.3.1. Prior to or upon execution of this Agreement, CenturyLink shall furnish to City Certificates of Insurance issued by CenturyLink's agent or broker, as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates. Such certificate(s) shall include the endorsement

including the City as an Additional Insured pursuant to Section 8.2.2 and shall be attached as Exhibit C to this Agreement.

8.3.2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City prior to the expiration date.

8.3.3. All Certificates of Insurance shall identify the policies in effect on behalf of CenturyLink, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance shall meet the requirements of the Agreement. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance carrier or agent. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this Agreement shall be sent to:

City of Tempe
Attn: Risk Manager
20 E. 6th St., 2nd Floor
Tempe, AZ 85281

with copies to:
City of Tempe
Attn: City Engineer
31 E. 5th St.
Tempe, AZ 85281

City of Tempe
Attn: ITD Telecom Policy Administrator
120 E. 5th St.
Tempe, AZ 85281

8.3.4. If the amount, type and/or applicability of insurance coverage under this Agreement becomes an issue in a bona fide claim or dispute arising between the parties, then upon written notice of the claim or dispute and request by the City, CenturyLink will provide certified copies of any or all of the applicable insurance policy provisions and/or endorsements required by this Agreement.

8.4 Required Coverage.

8.4.1 Such insurance shall protect CenturyLink from claims set forth below that may arise out of or result from the operations of CenturyLink under this Agreement and for which CenturyLink may be legally liable, whether such operations be by CenturyLink or by a consultant or Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts may be legally liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG 00 01 10 01 and CG 20 37 07 04 or the updated equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

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

8.4.3 Claims for damages insured by usual personal and advertising injury liability coverage;

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

8.4.5 Claims involving contractual liability insurance applicable to CenturyLink's obligations under the indemnification agreement.

8.5 Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$5,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000 per occurrence and an aggregate of \$10,000,000 in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20 10 10 01 and CG 20 37 07 04, and shall include coverage for CenturyLink's completed operations and products.

8.6. Worker's Compensation and Employer's Liability.

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

8.7. Automobile Liability.

If CenturyLink owns and/or operates vehicles in Arizona, CenturyLink shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$5 million each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CenturyLink's work. Coverage shall be at least as broad as coverage Symbol 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001 0306, or any replacements thereof). If hazardous substances, materials or wastes are to be transported, such insurance shall include coverage for pollution for upset/overturn/collision of the automobile(s) and loading and offloading hazards and a MCS 90 endorsement shall be included with coverage limits of \$5 million per accident for bodily injury and property damage.

ARTICLE 9: DEFAULT AND TERMINATION

9.1 An Event of Default for a Party occurs when such Party fails to observe and perform obligations, covenant, or other condition as set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice from the non-defaulting Party (or if such failure cannot be cured within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion within ninety (90) days.

9.2 CenturyLink's right to use up to 8 fiber strands and/or this Agreement can be terminated by the City for the following reasons:

9.2.1 CenturyLink 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, security fund, letter of credit, and/or a performance bond that may be required by the City.

9.2.2 CenturyLink fails to provide the City with the Bill of Sale for the Fiber Infrastructure required within thirty (30) business days of the execution of this Agreement.

9.2.3 CenturyLink ceases doing business in the City.

9.2.4 CenturyLink 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 City, threaten the financial viability of CenturyLink as a going concern, or if there is any similar action that affects CenturyLink's capability to perform its obligations under this Agreement.

9.2.5 CenturyLink fails to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the right-of-way and/or provision of services using the Fiber Infrastructure.

9.2.6 CenturyLink fails to timely pay any taxes pertaining to the right-of-way and/or provision of services using the Fiber Infrastructure that may be imposed.

9.2.7 There is an uncured Event of Default by CenturyLink under section 9.1.

9.2.8 The City has relocated the City Conduit and Fiber Infrastructure so that the Stadium Property is no longer served by the route location(s) on Exhibit A.

ARTICLE 10: FORCE MAJEURE

In no event shall a Party have any claim or right against the other Party for any failure of performance due to causes beyond its control, including but not limited to: acts of God, fire, explosion, vandalism, terrorism, flood or other similar occurrences; any future changes to laws, orders, regulations, directions, actions or requests of any instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; insurrections; riots, or wars (collectively, "Force Majeure events"). A Force Majeure event will excuse performance only for so long as the Force Majeure event prevents a Party's performance and each Party must use every commercially reasonable means to mitigate the impact of a Force Majeure event.

ARTICLE 11: ASSIGNMENT/TRANSFER

11.1 This Agreement is personal to CenturyLink.

11.2 This Agreement and the right to use up to eight (8) fiber strands as described on Exhibit A can only be transferred or assigned to a CenturyLink affiliate, which for purposes of this Agreement shall mean any entity that directly owns or controls, is owned or controlled by, or is under common ownership or control with CenturyLink. For purposes of this definition, the term “own” means to own an equity interest (or the equivalent thereof) of more than fifty percent (50%).

ARTICLE 12: NOTICES

Notices under this Agreement shall be in writing and delivered by certified mail, return receipt requested, to the persons whose names and business addresses appear below and such notice shall be effective on the date of receipt or refusal thereof by the receiving Party:

City: City of Tempe
ITD: Telecom Policy Administrator
120 E. 5th St.
Tempe, AZ 85281

Tempe City Attorney's Office
21 E. 6th St., Suite # 201
Tempe, AZ 85281

CenturyLink:

Network Attorney
CenturyLink
1801 California Street
9th Floor
Denver, Colorado 80202

With copies to: Gary G. Baker
Engineer II
CenturyLink
135 West Orion Street
Tempe, Arizona 85283

Any Party may change its address and point of contact by notifying the other Party in accordance with this Article.

ARTICLE 13: CANCELLATION FOR CONFLICT OF INTEREST

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

ARTICLE 14: MISCELLANEOUS

- 14.1 This Agreement is made pursuant to and shall be construed and enforced in accordance with the laws of the State of Arizona without regard to its choice of law principles.
- 14.2 This Agreement may be amended or modified only by written instrument duly executed by each of the Parties.
- 14.3 The headings of the Articles in this Amendment are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions, or conditions of this Agreement.
- 14.4 In the event any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.
- 14.5 No failure to exercise and no delay in exercising, on the part of either Party hereto, any right, power, or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein.
- 14.6 This Agreement and any Exhibits attached hereto or to be attached hereto, constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any and all prior negotiations, understandings, and agreements with respect hereto, whether oral or written.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Qwest Corporation
a Colorado corporation

By: _____

Name: _____

Title: _____

City of Tempe,
an Arizona municipal corporation

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Andrew B. Ching, City Attorney

Exhibit A: Map of Communications Infrastructure Used, Fiber Installation route and Specifications

Exhibit B: Form of Bill of Sale

Exhibit C: Certificate of Insurance