



**TRIPLET MOUNTAIN COMMUNICATIONS, INC.**

# **BID PACKAGE**

## **RESPONSE TO:**

**GILA COUNTY**

**WAN AND INTERNET SERVICES**

**RFP NO. 080116**

**September 9, 2016, 4:00 PM**

## **SUBMITTED BY:**

**Triplet Mountain Communications, Inc.**

REQUEST FOR PROPOSALS NO. 080116  
WAN AND INTERNET SERVICES

**QUALIFICATION AND CERTIFICATION FORM**

**EXHIBIT "D" Bidder Qualifications and Certification**

This exhibit shall serve as a requirement to enable the evaluation team to assess the qualifications of Service Providers under consideration for final award.

The information may or may not be a determining factor in award.

**Contract Number 080116 WAN and Internet Services**

The applicant submitting this Proposal warrants the following:

**1. Name, Physical Address, E-Mail Address and Telephone Number of Principal Service Provider:**

Triplet Mountain Communications, Inc.

Telecom Lane, Suite 2, Peridot,

TEL (928) 475-8624      Email: shirley.ortiz@tmci.us

- 2. Has Service Provider (under its present or any previous name) ever failed to complete a contract?**  
       Yes   X   No. If "Yes, give details, including the date, the contracting agency, and the reasons Service Provider failed to perform in the narrative part of this Contract.
- 3. Has Service Provider (under its present or any previous name) ever been disbarred or prohibited from competing for a contract?**        Yes   X   No. If "Yes", give details, including the date, the contracting agency, the reasons for the Service Providers disqualification, and whether this disqualification remains in effect in the narrative part of this Contract.
- 4. Has a contracting agency ever terminated a contract with the Service Provider prior to contract expiration date (under your Service Provider's present or any previous name)?**        Yes   X   No. If "Yes", give details including the date, the contracting agency, and the reasons Service Provider was terminated in the narrative part of this Contract.
- 5. SERVICE PROVIDER MUST ALSO PROVIDE AT LEAST THE FOLLOWING INFORMATION ALONG WITH THEIR PROPOSAL SUBMITTAL:**
- a. A brief history of the Company.
  - b. A Cost Proposal shall be submitted on the Price Sheet, attached herein and made a full part of this contract by this reference.
  - c. A list of previous and current customers, which are considered identical or similar to the Scope of Services described herein, shall be submitted on the Reference List, attached herein and made a full part of this contract by this reference.
  - d. List the specific qualifications the Service Provider has in supplying the specified services.
  - e. A list of any subcontractor Providers (if applicable) to be used in performing the service must accompany the Proposal.
  - f. Sealed list of "equipment used" in performing the services must accompany proposal submitted by Service Provider.
  - g. Gila County reserves the right to request additional information.

**REQUEST FOR PROPOSALS NO. 080116  
WAN AND INTERNET SERVICES**

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6. **Service Provider Experience Modifier (e-mod) Rating in Arizona:** \_\_\_\_\_  
(If Applicable)  
A method the National Council on Compensation Insurance (NCCI) uses to measure a business' computed loss ratio and determine a factor, which when multiplied by premium, can reward policyholders with lower losses. E-mod rate may be a determining factor in bid award.
7. **Current Service Provider Business License Number:** F11844139  
(If Applicable)
8. **Service Provider must provide copies of all required Arizona Certifications and Licenses in performing the scope of services provided in this request for proposals.**

  
\_\_\_\_\_  
**Signature of Authorized Representative**

Shirley Ortiz  
\_\_\_\_\_  
**Printed Name**

CEO/General Manager  
\_\_\_\_\_  
**Title**

Request For Proposals No. 080116  
WAN AND INTERNET SERVICE

**PRICE EVALUATION FORM**

**Project Name** Bundled Internet Access

**RFP Reference** WAN & Internet Services

The County shall use the price(s) below to determine the Bidder's evaluation score for all "Cost" related evaluation criteria

**Instructions**

1. Bidders shall provide a line item price for the "Recurring Price", and if applicable the "One-Time Price" for each of the site(s) listed below
2. Bidder shall provide a description and line item price for an "Additional" price elements that are not included in the "Recurring Price" and "One-Time Price" totals that are included in the Service Provider's bid.
3. (blank)

**Recurring Price**

Service	Description	Speed - Mbps	Monthly recurring price	Contract Term	Recurring price total	Point of demarcation	One - time cost
Internet Access (Bandwidth)	Synchronous DIA, fiber delivery with RJ45 GigE interface	200	\$ 2,606.00	36	\$ 93,816.00	MDF = 1400 East Ash St, Globe, AZ 85501	\$ 1,995.00
Internet Access (Bandwidth) Option 1	Synchronous DIA, fiber delivery with RJ45 GigE interface	250	\$ 3,095.00	36	\$ 111,420.00	MDF = 1400 East Ash St, Globe, AZ 85501	\$ 1,995.00
Internet Access (Bandwidth) Option 2	Synchronous DIA, fiber delivery with RJ45 GigE interface	300	\$ 3,695.00	36	\$ 133,020.00	MDF = 1400 East Ash St, Globe, AZ 85501	\$ 1,995.00
Internet Access (Bandwidth) Option 3	Synchronous DIA, fiber delivery with RJ45 GigE interface	500	\$ 4,395.00	36	\$ 158,220.00	MDF = 1400 East Ash St, Globe, AZ 85501	\$ 1,995.00

After year 3 option to renew at the current rate or the best TMCI pricing for the identical service. Customer may increase service at any time during the 3 year term at the listed prices.

Triplet Mountain Communications, Inc.

Bidder's Name



Signature

09/09/2016

Date

Shirley Ortiz, CEO/General Manager

Name/Title

Request For Proposals No. 080116  
WAN AND INTERNET SERVICE

**PRICE EVALUATION FORM**

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2. Bidder shall provide a description and line item price for an "Additional" price elements that are not included in the "Recurring Price" and "One-Time Price" totals that are included in the Service Provider's bid.
3. (blank)

**Recurring Price \*prices when bundled with Internet Access.**

Service	Description	Speed - Mbps	Monthly recurring price	Contract Term	*Recurring price total	Point of demarcation A location	Point of demarcation Z location	One - time cost
WAN Connection (Circuit)	Point to point Ethernet, dedicated fiber delivery with RJ45 GigE Interface	1,000	\$ 995.00	36	\$ 35,820.00	MDF = 1400 East Ash St, Globe, AZ 85501	MDF = 5515 S. Apache Ave, Globe, AZ 85501	\$ 1,995.00
WAN Connection (Circuit)	Point to point Ethernet, dedicated fiber delivery with RJ45 GigE Interface	1,000	\$ 995.00	36	\$ 35,820.00	MDF = 1400 East Ash St, Globe, AZ 85501	MDF = 745 N. Rose Mofford Way, Apache Ave, Globe, AZ 85501	\$ 1,995.00
WAN Connection (Circuit) synchronous 10/10(month to month as needed, 6 month term entered for illustrative purposes)	Point to point Ethernet, wireless PTMP radio with RJ45 Interface	10	\$ 129.95	6	\$ 779.70	MDF = 157 S. Broad St., Globe, AZ 85501	MDF = 745 N. Rose Mofford Way, Globe, AZ 85501	\$ 295.00
WAN Connection (Circuit) synchronous 20/20(month to month as needed, 6 month term entered for illustrative purposes)	Point to point Ethernet, wireless PTMP radio with RJ45 Interface	20	\$ 199.95	6	\$ 1,199.70	MDF = 157 S. Broad St., Globe, AZ 85501	MDF = 745 N. Rose Mofford Way, Globe, AZ 85501	\$ 295.00

Triplet Mountain Communications, Inc.

Bidder's Name

*Shirley Ortiz*

Signature

*09/09/2016*

Date

Shirley Ortiz, CEO/General Manager

Name/Title

REQUEST FOR PROPOSALS NO. 080116  
WAN AND INTERNET SERVICES

**REFERENCES LIST**

**References**

Please list a minimum of three (3) references for contracts of similar size and scope as this Request for Proposals during the past twenty-four (24) months, in or as close to Gila County as possible. Bidder may attach further reference information as necessary.

1. **Company Name:** Apache Gold Casino  
**Contact:** Ray Zaragoza  
**Phone:** (928) 475-7056 **Address:** PO Box 1210, San Carlos, AZ 85550  
**Job Length of Time:** \_\_\_\_\_ Months \_\_\_\_\_ 19 \_\_\_\_\_ Years  
**Job Description:** Ethernet Transport Service with Dedicated Internet Access  
T1-PRI Service, multiple DSL Internet Connections  
\_\_\_\_\_
  
2. **Company Name:** San Carlos Health Care Corporation  
**Contact:** Darryl Griffin  
**Phone:** (928) 475-7222 **Address:** 103 Medicine Way Road, Peridot, AZ 85542  
**Job Length of Time:** \_\_\_\_\_ Months \_\_\_\_\_ 1 \_\_\_\_\_ Years  
**Job Description:** Ethernet Transport Service with Dedicated Internet Access  
T1-PRI Service  
\_\_\_\_\_
  
3. **Company Name:** Fort Thomas Unified School District  
**Contact:** Allison Haws  
**Phone:** (928) 792-0055 **Address:** 15560 W. Elementary School Road, Fort Thomas, AZ 85536  
**Job Length of Time:** \_\_\_\_\_ Months \_\_\_\_\_ 1 \_\_\_\_\_ Years  
**Job Description:** Ethernet Transport Service with Dedicated Internet Access  
\_\_\_\_\_  
\_\_\_\_\_

Triplet Mountain Communications, Inc.  
**Company Name**  
  
**Signature of Authorized Representative**  
CEO/General Manager  
**Title**

WAN AND INTERNET SERVICES

AFFIDAVIT BY SERVICE PROVIDER  
CERTIFYING THAT THERE WAS NO COLLUSION  
IN BIDDING FOR CONTRACT

STATE OF ARIZONA            )  
  )ss  
COUNTY OF:                 )

Shirley Ortiz  
\_\_\_\_\_  
(Name of Individual)

being first duly sworn, deposes and says:

That he/she is CEO/General Manager  
\_\_\_\_\_  
(Title)  
of Triplet Mountain Communications, Inc. and  
\_\_\_\_\_  
(Name of Business)

That he/she is bidding on **Gila County BID NO. 080116 WAN AND INTERNET SERVICES, GLOBE, AZ,**  
and,

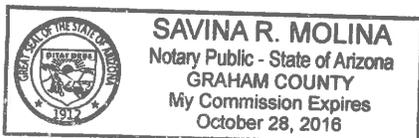
That neither he/she nor anyone associated with the said

Triplet Mountain Communications, Inc.  
\_\_\_\_\_  
(Name of Business)

has, directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action  
in restraint of free competitive bidding in connection with the above mentioned project.

Triplet Mountain Communications, Inc.  
\_\_\_\_\_  
Name of Business

Shirley Ortiz  
\_\_\_\_\_  
By  
CEO/General Manager  
\_\_\_\_\_  
Title



Subscribed and sworn to before me this 9<sup>th</sup> day of September, 2016.

Savina R. Molina  
\_\_\_\_\_  
Notary Public

My Commission expires:  
October 28, 2016

**CERTIFICATION: INTENTIONS CONCERNING SUBCONTRACTING**

At the time of the submission of bids for Request for Proposals No. 080116, WAN and Internet Services, my intention concerning subcontracting a portion of the work is as indicated below.

In indicating that it is my intention to subcontract a portion of the work, this will acknowledge that such subcontractor will be identified and approved by the Facilities Manager prior to award of the contract; and that documentation, such as copies of letters, requests for quotations, quotations, etc., substantiating the actions taken and the responses to such actions is on file and available for review.

A list of any subcontractor (if applicable) to be used in performing the service must accompany the Proposal response. The list must include the subcontractor Providers name, address, and phone number.

Any subcontractor not listed with the bid must be approved by the County Facilities Manager prior to providing any work pursuant to this contract. Further, Service Provider warrants that all subcontractor will comply with all terms and conditions of this contract including but not limited to all insurance and worker's compensation coverage provisions of this contract. The County reserves the right to terminate the contract if the Service Provider fails to comply with the provisions of this certification.

- It is my intention to subcontract a portion of the work.
- It is not my intention to subcontract a portion of the work.

Triplet Mountain Communications, Inc.

Name of Firm



By: (Signature)

CEO/General Manager

Title

**LEGAL ARIZONA WORKERS ACT COMPLIANCE**

Service Provider hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Service Provider's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Service Provider shall further ensure that each subcontractor Provider who performs any work for Service Provider under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Service Provider and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Service Provider's or any subcontractor warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Service Provider to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor Provider, and the subcontract is suspended or terminated as a result, Service Provider shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay delivery of services.

Service Provider shall advise each subcontractor of County's rights, and the subcontractor Provider's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor Provider hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Service Provider.

  
\_\_\_\_\_  
Signature of Authorized Representative

Shirley Ortiz  
\_\_\_\_\_  
Printed Name

CEO/General Manager  
\_\_\_\_\_  
Title

**REQUEST FOR PROPOSALS NO. 080116  
WAN AND INTERNET SERVICES**

**BIDDER CHECKLIST & ADDENDA ACKNOWLEDGMENT**

**NOTICE IS HEREBY GIVEN** that all Bid Documents shall be completed and/or executed and submitted with this Request for Proposals (RFP). If Service Provider fails to complete and/or execute any portion of the Bid documents, all with original signatures, the RFP may be determined to be "non-responsive" and rejected.

**CHECKLIST:**

<b><u>REQUIRED DOCUMENT</u></b>	<b><u>COMPLETED / EXECUTED</u></b>
QUALIFICATION & CERTIFICATION FORM	<u>✓</u>
PRICE SHEET	<u>✓</u>
REFERENCE LIST	<u>✓</u>
NO COLLUSION IN BIDDING	<u>✓</u>
INTENTIONS IN SUBCONTRACTING	<u>✓</u>
LEGAL ARIZONA WORKERS ACT COMPLIANCE	<u>✓</u>
BIDDER'S CHECKLIST & ADDENDA ACKNOWLEDGMENT	<u>✓</u>
OFFER AND ACCEPTANCE PAGE	<u>✓</u>
BACKGROUND AUTHORIZATION	<u>✓</u>
W-9	<u>✓</u>

**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA:**

	<b>#1</b>	<b>#2</b>	<b>#3</b>	<b>#4</b>	<b>#5</b>
INITIALS	<u>SO</u>	<u>SO</u>	<u>SO</u>	<u>SO</u>	<u>SO</u>
DATE	<u>09/09/2016</u>	<u>09/09/2016</u>	<u>09/09/2016</u>	<u>09/09/2016</u>	<u>09/09/2016</u>

Signed and dated this 9 day of September, 2016.

Triplet Mountain Communications, Inc.  
 Service Provider:  
Shirley Ortiz  
 By: Shirley Ortiz, CEO/General Manager

Each proposal shall be sealed in an envelope addressed to the Gila County Purchasing Department and bearing the following statement on the outside of the envelope: *Company Name, Request for Sealed Proposals No. 080116 WAN and Internet Services*. All proposals shall be filed with Gila County Procurement at 1400 E. Ash St., Guerrero Building, Globe, AZ on or before September 9, 2016, 4:00 PM.

REQUEST FOR PROPOSALS NO. 080116  
WAN AND INTERNET SERVICES

**OFFER AND ACCEPTANCE**

**TO GILA COUNTY:**

The undersigned hereby offers and agrees to furnish the material or service in compliance with all terms and conditions, instruction, specifications, and any amendments contained in this Request for Proposal document.

Signature also certifies the Service Providers bid proposal is genuine, and is not in any way collusive or a sham; that the bid proposal is not made with the intent to restrict or prohibit competition; that the Service Provider submitting the proposal has not revealed the contents of the proposal to, or in any way colluded with, any other Service Provider which may compete for the contract; and that no other Service Provider which may compete for the contract has revealed the contents of a proposal to, or in any way colluded with, the Service Provider submitting this proposal.

**Service Provider Submitting Proposal:**

Triplet Mountain Communications, Inc.  
\_\_\_\_\_  
**Company Name**  
10 Telecom Lane, Suite 2  
\_\_\_\_\_  
**Address**  
Peridot AZ 85542  
\_\_\_\_\_  
**City State Zip**  
\_\_\_\_\_  
**Signature of Person Authorized to Sign**  
Shirley Ortiz  
\_\_\_\_\_  
**Printed Name**  
CEO/General Manager  
\_\_\_\_\_  
**Title**

**For Clarification of this Offer. Contact:**

**Name:** Derek White  
\_\_\_\_\_  
**Title:** Assistant General Manager  
\_\_\_\_\_  
**Phone No.:** (928) 475-7082  
\_\_\_\_\_  
**Fax:**  
(928) 475-7047  
\_\_\_\_\_  
**Email:**  
derek.white@tmci.us  
\_\_\_\_\_

**ACCEPTANCE OF OFFER**  
*(For Gila County use only)*

The Service Provider is now bound to provide the materials or services listed in RFP No.: 080116 including all terms and conditions, specifications, amendments, etc. and the Service Provider's Offer as accepted by County/public entity. The contract shall henceforth be referenced to as Contract No. 080116.

**GILA COUNTY BOARD OF SUPERVISORS**

**ATTEST**

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Marian Sheppard, Clerk of the Board

\_\_\_\_\_  
Michael A. Pastor, Chairman, Board of Supervisors

**APPROVED AS TO FORM**

\_\_\_\_\_  
Jefferson R. Dalton  
Deputy County Attorney, Civil Bureau Chief  
for Bradley D. Beauchamp, County Attorney



WAIVER OF LIABILITY AND RELEASE FORM  
BACKGROUND INVESTIGATION AUTHORIZATION

I SHIRLEY A ORTIZ hereby give the Gila County Purchasing Department the right  
(Print First, Middle Initial, & Last Name)

to make a thorough investigation of my background as part of the bidding proposal process for Bid No. 080116.

The term "back-ground investigation" as used in this document refers to any and all information and sources of information that may be deemed necessary to obtain or contact, to determine the offerors fitness as a bid award candidate.

I understand that I do not have to agree to this background investigation, but that refusal to do so may exclude me from consideration for bid award.

I understand that information collected during this investigation will be limited to that appropriate to determining my suitability for the project out for bids and that all such information collected during the investigation will be kept confidential.

I hereby release from liability and promise to hold harmless, under any and all possible causes of legal action, any and all persons or entities who shall furnish any information or opinions to the Purchasing Department, its agents or employees.

I hereby release from liability and promise to hold harmless, under any and all possible causes of legal action, the political subdivision, the Purchasing Department, its agents or employees for any statements, acts or omissions in the course of my background investigation.

I release from liability given by me to the political division, its officers, agents and employees, all others as mentioned above, shall apply to any rights of action arising from the denial of bid award based on information received from the background investigation.

*Please read carefully before signing.*

Signed: Shirley Ortiz

Date: 09/09/2016

Date of Birth: 12/14/1952

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>Triplet Mountain Communications, Inc.</b>		
	2 Business name/disregarded entity name, if different from above		
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____ <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>	
	5 Address (number, street, and apt. or suite no.) <b>PO Box 779, 10 Telecom Lane-Suite 2</b>	Requester's name and address (optional) <b>Gila County</b>	
	6 City, state, and ZIP code <b>Peridot, Arizona 85542</b>		
	7 List account number(s) here (optional)		

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

<b>Social security number</b>									
-	-								
or									
<b>Employer identification number</b>									
1	1	-	3	7	1	7	4	6	9

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**      Signature of U.S. person ▶      Date ▶ 9-6-2014

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

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**Company History**

Triplet Mountain Communications, Inc. (TMCI) is a wholly owned subsidiary of San Carlos Apache Telecommunications Utility, Inc., a corporation owned by the San Carlos Apache Tribe. San Carlos Apache Telecommunications Utility, Inc. (SCATUI) was established by the San Carlos Apache Tribe by tribal resolution on March 8, 1994. The tribe's main objective was to develop, own, finance, construct, and operate a telecommunications company to provide quality services for its members. SCATUI telephone exchange serves the communities within the San Carlos Apache Reservation. TMCI was incorporated to operate and provide telecommunication services off the reservation, in 2006.

Since its incorporation, TMCI has established transport service from the southern regions of Arizona in to the Phoenix PNAP on its west route and east ward into the Tucson tandem on its east route.

TMCI offers transport service for telecom backhaul of voice and data traffic and has recently released its fixed wireless internet service in the Globe and Superior communities.

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**TMCI qualifications for providing the services list on RFP 080116**

1. Triplet Mountain Communications Inc. (TMCI) as a fully owned subsidiary of San Carlos Apache Telecommunications Utility Authority (SCATUI) and is a federally recognized Independent Local Exchange Carrier, regulated by the Federal Communications Commission and TMCI is certified as a statewide Competitive Local Exchange Carrier by the Arizona Corporation Commission.
2. TMCI owns and operates a fiber network consisting of owned and leased fiber and leased circuits that extend from the CenturyLink Tucson Main Central Office to the Phoenix Nap (PNAP) data center in Phoenix Arizona. TMCI also owns and operates wireless network elements.
3. TMCI was incorporated in 2006 and its initial fiber backhaul became operational in 2012.
4. TMCI has fiber facilities in the City of Globe that are being extended to 1400 East Ash St as the result of being awarded an E-Rate contract for the Gila County Library.
5. TMCI network utilizes carrier grade DWDM fiber transport equipment with a current capacity of 40Gbps with expansion capability up to 100Gbps by adding cards. Additional capacity growth can be accommodated by adding additional equipment on the existing fiber optic cable.
6. TMCI has the staff to operate all elements of its network and has secured factory agreements as needed for additional support and monitoring of the network.
7. TMCI, as the result of its network design, provides additional reliability as it operates fiber routes to both Tucson and Phoenix.
8. TMCI services will be 100% Ethernet and will not convert from TDM or any other technology

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**List of equipment used to provide service (SEALED):**

1. Internet access and WAN service (except temporary services at 157 S Broad St) will be delivered via fiber optic cable with demarcation hand-off to be provided by a GigE Ethernet, RJ45 copper connection.
2. WAN services at 157 S. Broad St will be delivered using Cambium PTMP wireless radios and ATAs.
3. Accedian EtherNid or similar interface equipment will be installed at MDF at the Ash, Rose Mofford Way and Apache Ave locations.
4. Fujitsu FW9500 transport equipment will be used for Internet Access transport

## Service Level Agreement

This Service Level Agreement ("SLA"), dated \_\_\_\_\_, 2016, between Triplet Mountain Communications Inc. ("Company") and Gila County ("Customer") (the "Agreement"), establishes Company's service level commitments applicable to the telecommunications services provided pursuant to the Agreement (the "Service(s)").

### **Definitions:**

For purposes hereof, "Company IP Network" shall include Company-owned and controlled IP backbone network, private network and WiFi access points. Company IP Network shall not include, and this SLA shall not apply to, (i) networks owned and/or controlled by other carriers; (ii) local access circuit; (iii) Customer premise equipment; (iv) Customer Local Area Network; or (v) interconnections to or from and connectivity within other Internet Service Provider networks.

For purposes hereof, a "Force Majeure" event shall mean any natural disaster, act of God, inclement weather, lightning, flood or fire; industrial action or lockouts; the act or omission of government, highway authorities, or any other competent authority; war or armed conflict, military operations, vandalism or riot; the act or omission of any other party (including any other party that provides any part of the Service upon which Company relies in order to provide any part of the Service) and national and/or civil emergencies.

### **Scope:**

This Service Level Agreement ("SLA") applies only to Customer's access and the Company IP Network. This SLA does not include networks owned and/or controlled by other carriers; local access circuit (e.g. local loop); Customer premise equipment (router or CPE); Customer's local area network (LAN); or interconnections to or from and connectivity within other Internet Service Provider (ISP) networks.

This SLA applies to Service and related equipment only. Company will not be responsible for, and service credits will not be issued in connection with, any failure by Company to meet a service level commitment by reason of any of the following:

- a. Any Customer act or omission, including without limitation any negligence, willful misconduct or misuse of any service or equipment, which impairs Company's ability to provide service;
- b. Scheduled maintenance on the Company IP Network;
- c. Suspension of Service by Company, including suspension for non-payment of Service charges;
- d. Any hardware, software or network failures or lack of Service availability that arises from or is the result of Force Majeure as defined herein;
- e. Any failure of any statistical monitoring devices used to measure the performance of the Service against the standards set by this SLA where the Service is itself unaffected by the failure of the statistical monitoring device(s);
- f. Failure of Customer to comply with the terms and conditions of the Agreement;
- g. Inability to gain access to Customer's premises (including the point of demarcation);
- h. Failure of Customer-provided equipment, cabling or power sources;
- i. Emergency maintenance by Company;
- j. Changes to Customer's Service made at Customer's request; or
- k. Time attributed to Customer's delay in responding to requests for assistance and/or access to repair the problem.

### **Monthly Service Availability:**

Company IP Network, as defined above, is guaranteed to be available and capable of forwarding IP packets 99.99% of the time, as averaged over a calendar month. If this service level commitment is not met in a calendar month, Customer may receive a service credit of 1/30th of the monthly recurring charge ("MRC") for that calendar month for each full day of outage. Limits on the service credit amount and reporting procedures are detailed below.

### **Packet Loss:**

Company IP Network is guaranteed to have a maximum average packet loss of one percent (1%) or less during any calendar month. If this service level commitment is not met in a calendar month, Customer may receive a service credit of 1/30th of the MRC for that month for each one (1) day the packet loss is above the one percent (1%) average maximum guaranteed under this SLA. Limits on the service credit and reporting procedures are detailed below.

### **Latency:**

Company IP Network is guaranteed to have an average round trip packet transit time within the Company IP Network over a calendar month of sixty (60) milliseconds or less. The average latency is measured as the average of 15-minute samples across the Company IP Network taken throughout the month. If this service level commitment is not met in a calendar month, Customer may receive a service credit of 1/30th of the MRC for that month for each day the latency is above the sixty (60) milliseconds average maximum guaranteed under this SLA. Limits on the service credit amount and reporting procedures are detailed below.

### **Time to Restore Service Outage:**

The guaranteed time to restore a service outage ("Time to Restore") is four (4) hours during normal business hours (8AM to 5PM M-F) or six (6) hours during non-business hours, weekends and holidays. Time to Restore begins on the date and time when Customer reports the service impairment to Company, via Company's Network Operations Center ("NOC") telephone number during normal business hours or Company's emergency NOC telephone number after normal business hours, with all information necessary for Company to respond to the issue, and ends upon confirmation by Company to Customer that service has been restored (in each case, based upon Company's records). Time to Restore shall be extended to account for any period of time spent by Company waiting for a response, availability, action or access to the premises from Customer in furtherance of the repair effort, and any period of time during which a "force majeure" event affecting service has occurred and is continuing. In the event a service engineer must be dispatched to site, Time to Restore will include an additional two (2) hour travel period.

If Company is unable to restore service within the Time to Restore and Customer requests a credit, Company will issue a credit of one (1) day of the MRC for each one (1) day of Service outage. The aggregate of all Service availability credits shall not exceed the total MRCs billed during the month.

### **Claims and Credit Availability:**

The provisions of this SLA state Customer's sole and exclusive remedy for Service interruptions or Service deficiencies of any kind whatsoever. Customer must open a trouble ticket with Company's customer care when Customer believes a service outage has occurred in order to have the network unavailability eligible for consideration for a service credit. Customer must initiate a trouble ticket by voice contact. Upon notification from Customer, Company will open a trouble ticket, test the affected service and attempt to isolate the problem. Company's records and data will be the sole basis for all service credit calculations and determinations. Customer will not be entitled to any service credits for service unavailability unless Customer has opened a trouble ticket and requested the service credit within one (1) week of the service unavailability.

Upon Customer's request, and if duly approved by Company, the service credit will be in an amount equal to the pro-rated amount of one (1) day of MRC for the Service affected only (i.e. Dedicated Internet Access). Customer is entitled to one (1) day MRC credit per incident and one (1) incident service credit per day. Customer's total service credit(s) in any one month will not exceed the equivalent of one hundred percent (100%) of the relevant MRCs for the affected service for that month. Cumulative service credits in any one-month must exceed twenty-five dollars (\$25.00) to be processed. If Customer fails to notify Company in the manner set forth herein with respect to the applicable service credits, Customer will have waived its right to such service credits for that month. The service credits will apply to the MRCs of the affected service and do not apply to MRCs of other services. To be eligible for service credits, the Customer must be in good standing with Company and current in all of its obligations.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
8/31/2016

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Telcom Insurance Services Corp. 6301 Ivy Lane, Suite 506 Greenbelt, MD 20770  www.TelcomInsGrp.com	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 800.222.4664      FAX (A/C, No): 301.474.6196 E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> San Carlos Apache Telecommunications Utility Triplet Mountain Communications, Inc. PO Box 1000 10 Telcom Lane Peridot AZ 85542	<b>INSURER A:</b> Great American Insurance Co of NY	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES      CERTIFICATE NUMBER: 31595433      REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	MAC 0253216	2/5/2016	2/5/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> \$500/\$500 comp-coll	<input checked="" type="checkbox"/>	CAP 0253217	2/5/2016	2/5/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$		EXC 0253219	2/5/2016	2/5/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	WC 0253218	2/5/2016	2/5/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

When required by written contract, The County of Gila is included as additional insured as respects to General Liability and Auto Liability. Waiver of subrogation applies in favor of The County of Gila. Limited care, custody or control is included. Master Key coverage is available by endorsement.

<b>CERTIFICATE HOLDER</b> Gila County Purchasing 1400 E. Ash St. Globe AZ 85501	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Peter J. Elliott

## ARTICLES OF INCORPORATION

### TRIPLET MOUNTAIN COMMUNICATIONS, INC.

(A wholly-owned subsidiary of  
San Carlos Apache Telecommunications Utility, Inc.)

#### THIS IS A NOTICE TO EVERYONE OF THE FOLLOWING:

That we, the undersigned, have associated ourselves for the purpose of forming a corporation for profit under and pursuant to the laws of the San Carlos Apache Tribe, and for that purpose do hereby adopt the following Articles of Incorporation:

#### ARTICLE I

The name of this corporation is Triplet Mountain Communications, Inc. and the duration of the corporation is perpetual.

#### ARTICLE II

The purpose for which this corporation is organized is the transaction of any and all lawful business for which the corporation may be incorporated under the laws of the San Carlos Apache Tribe as they may be amended from time to time. The corporation initially intends to do and perform all business transactions relating to the provision of communications and telecommunications services of every type and kind, and to perform, maintain and contract for service and maintenance on all equipment sold or handled by said corporation and all similar equipment outside of the boundaries of the San Carlos Apache Indian Reservation.

The corporation shall also do and have all powers common to domestic corporations as authorized by the San Carlos Apache Tribe and its Constitution, Laws and Ordinances and any subsequent enactment thereto or revision thereof, including but not limited: (a) to sue and be sued in the corporate name; (b) to enter into contracts, incur obligations and otherwise engage in transactions and carry on business outside of this Reservation; (c) to acquire, purchase, give, will or otherwise own, hold control, encumber, pledge, convey, sell or otherwise dispose of or deal in, outside of this Reservation, any personal property or interest therein and subject to statutory and Constitutional limitations, any real property or interest therein; and (d) all other powers authorized by existing law or any amendment or revision thereof.

#### ARTICLE III

The corporation shall have authority to issue one hundred (100) shares of common stock (no par value).

ARTICLE IV

The name and address of the initial statutory agent of the corporation is:

Vernon R. James  
P.O. Box 779  
Peridot, Arizona 85542

ARTICLE V

The known place of business of the corporation shall be P.O. Box 779, Peridot, Arizona 85542.

ARTICLE VI

As a wholly-owned subsidiary of San Carlos Apache Telecommunications Utility, Inc. ("SCATUI"), the Board of Directors of this corporation shall at all times be the same as the Board of Directors of SCATUI.

ARTICLE VII

The incorporators of the corporation are:

Vernon R. James, P.O. Box 1000, Peridot, Arizona 85542  
Charles Russell, Sr., P.O. Box 1000, Peridot, Arizona 85542

ARTICLE VIII

The corporation shall indemnify any person who incurs expense by reason of the fact that he or she is or was an officer, director, employee or agent to or of the corporation. The indemnification shall be mandatory in all circumstances in which indemnification is permitted by law.

  
Vernon R. James, Incorporator

  
Charles Russell, Sr., Incorporator

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
SAN CARLOS APACHE TELECOMMUNICATIONS UTILITY, INC.  
(Amended through August 12, 2016)

THIS IS A NOTICE TO EVERYONE OF THE FOLLOWING:

That we, the undersigned, have associated ourselves for the purpose of forming a corporation for profit under and pursuant to the laws of the San Carlos Apache Tribe, and for that purpose do hereby adopt the following Articles of Incorporation:

ARTICLE I

The name of this corporation is SAN CARLOS APACHE TELECOMMUNICATIONS UTILITY, INC. and the duration of the corporation is perpetual so long as the laws and ordinances of the Tribe are complied with.

ARTICLE II

The purpose for which this corporation is organized is the transaction of any and all lawful business for which the corporation may be incorporated under the laws of the San Carlos Apache Tribe as they may be amended from time to time. The corporation initially intends to do and perform all business transactions including construction, operation and maintenance relating to the retail or wholesale of telephones, computers, electronic equipment and provisioning of telecommunications service, including but not limited to the receiving and transmission of telephone signals over wireline, microwave and cellular radio systems, the provisioning of cable television service and electronic data of all types and kinds, including software, and to perform, maintain and contract for service and maintenance on all equipment sold or handled by said corporation and all similar equipment wherever manufactured, sold and distributed.

The corporation shall also have the power and authority to plan for, promote, acquire, develop, construct, operate, maintain and expand utility systems providing electric, natural gas, water and sewer services within the San Carlos Apache Reservation.

The corporation shall further have all powers common to domestic corporations as authorized by the San Carlos Apache Tribe and its Constitution, Laws and Ordinances and any subsequent enactment thereto or revision thereof, including but not limited to: (a) to sue and be sued in the corporate name; (b) to enter into contracts, incur obligations and otherwise engage in transactions and carry on business on this Reservation or elsewhere; (c) to acquire, purchase, give, will or otherwise own, hold, control, encumber,

pledge, convey, sell or otherwise dispose of or deal in, on this Reservation or elsewhere, any personal property or interest therein and subject to statutory and Constitutional limitations, any real property or interest therein; and (d) all other powers authorized by existing law or any amendment or revision thereof.

### ARTICLE III

The corporation shall have authority to issue one hundred (100) shares of common stock (no par value). The sole shareholder of the corporation shall be the San Carlos Apache Tribe.

### ARTICLE IV

The name and address of the initial statutory agent of the corporation is:

Shirley Ortiz,  
General Manager  
SCATUI  
P. O. Box 1000  
Globe, Arizona 85542

### ARTICLE V

The known place of business of the corporation shall be P. O. Box 0, San Carlos, Arizona 85550.

### ARTICLE VI

The Board of Directors shall consist of seven (7) directors. The names and addresses of the persons who are to serve as directors until the next annual meeting of shareholders or until their successors are duly elected and qualified are:

Name: Simon Hooke, Chairperson	Address: P.O. Box 0, San Carlos, AZ 85550
Name: Boyd Evans, Vice Chair	Address: P.O. Box 0, San Carlos, AZ 85550
Name: Gary Braxton	Address: P.O. Box 0, San Carlos, AZ 85550
Name: Tony Bliss	Address: P.O. Box 0, San Carlos, AZ 85550
Name: Wendsler Nosie, Sr.	Address: P.O. Box 0, San Carlos, AZ 85550

Name: Mitch Hoffman

Address: P.O. Box 0, San Carlos, AZ 85550

Name: Alicia Cadmus

Address: P.O. Box 0, San Carlos, AZ 85550

#### ARTICLE VII

The incorporators of the corporation are:

Harrison Talgo, Sr., P. O. Box 0, San Carlos, Arizona 85550

Raymond Stanley, P. O. Box 0, San Carlos, Arizona 85550

#### ARTICLE VIII

The corporation shall indemnify any person who incurs expense by reason of the fact that he or she is or was an officer, director, employee or agent to or of the corporation. The indemnification shall be mandatory in all circumstances in which indemnification is permitted by law.

#### ARTICLE IX

The power to make, alter, amend or repeal the bylaws of the corporation shall be vested in the shareholder of the corporation.

**BROADBAND SERVICES LICENSE AGREEMENT  
BETWEEN THE CITY OF GLOBE, ARIZONA AND  
TRIPLET MOUNTAIN COMMUNICATIONS, INC.**

This Broadband Services License Agreement (the "License") is effective as of the 8th day of December 2015, by and between the City of Globe, an Arizona municipal corporation ("City") and Triplet Mountain Communications, Inc. ("Licensee" or "TMCI"), a corporation organized and existing under the laws of the San Carlos Apache Tribe, subject to and regulated by the Arizona Corporation Commission and authorized to do business in the State of Arizona.

**WITNESSETH**

WHEREAS, the City is authorized to grant and renew broadband licenses for the installation, operation and maintenance of broadband services systems within the City's boundaries by virtue of (i) Federal and State statutes, (ii) the City's police powers, and (iii) the City's authority over its public rights of way; and

WHEREAS, TMCI is regulated by the Arizona Corporation Commission; and

WHEREAS, TMCI has applied to the City for approval of a non-exclusive License (hereinafter the "License") to construct, and operate and maintain a broadband services system within the City, and,

WHEREAS, the City Council, after notice and public hearing, determined that it would serve the public interest of the citizens of the City to approve granting TMCI a broadband services License, and

WHEREAS, TMCI wishes to obtain a License, and City is willing to grant one, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**BROADBAND SERVICES LICENSE AGREEMENT**

**Section 1. Definitions**

For the purposes of this License, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular included the plural. The word "shall" is always mandatory and not merely directory.

A. "Broadband Services" shall mean high-speed communications services that offer internet connectivity.

B. "Broadband System" shall include, but is not limited to, lines, poles, towers, wires, cables, conduits, transmission lines, transformers, switches, communications lines, antennas and other similar equipment and facilities used to provide Broadband Services.

C. "Code" or "City Code" shall mean the Globe City Code as from time to time amended.

D. "Gross Revenues" shall mean all revenue received by TMCI from charges for broadband service to Subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a Subscriber to receive Broadband Service, and any other receipts from Subscribers derived from operating the Broadband System, including receipts from forfeited deposits, sale or rental of equipment, late charges, interest and sale of program guides, all as derived from services and activities provided by TMCI within the municipal boundaries of the City.

E. "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind other than the City.

F. "Public Way" means all roads, streets, alleys and all other dedicated public right-of-ways and public utility easements of the City.

G. "Subscriber" shall mean an authorized recipient lawfully receiving Broadband Service under this License.

H. "Reasonable Notice" shall mean the following: Unless otherwise defined herein, reasonable notice means the delivery of written notice to the other party at least thirty (30) days prior to the action proposed as a result of the alleged defect, situation or default. In the event of any emergency that poses an immediate risk of harm to the health, safety, welfare or property of the residents of the City, reasonable notice shall be as soon as practicable under the circumstances.

I. "Remote Terminal" shall mean a service cabinet capable of offering Broadband Services to Subscribers.

J. "Standard Drop" means the Broadband Service line from a Remote Terminal cabinet to the customer's residence or building. A standard drop shall exclude custom installation work, which shall include but not be limited to extensive asphalt construction, concrete jacking, and specific customer requested work that requires non-standard inventory or cable routing.

## Section 2. Grant of License

A. The City hereby grants to TMCI the authority and permission to engage in the business of operating and providing a Broadband System in the City, and for that purpose to erect, install, solicit, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across, and along any public street, right of way or other municipal property or facility such as poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary or appurtenant to the Broadband System. TMCI may also so use, operate and provide similar facilities or properties rented, licensed or leased from other persons, firms or corporations, including but not limited to any public utility or other

licensee licensed or permitted to do business in the City. The service area for the Broadband System shall be the current incorporated boundaries of the City and any future annexations by the City.

B. The grant of authority to operate a Broadband System in the City and the right to use and occupy the public ways for the purposes herein set forth shall not be exclusive. The City reserves the right, in its discretion, to grant other licenses to other broadband providers.

C. Any privilege claimed under this License in any public street or other public property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity, and shall be subordinate to any prior lawful occupancy or use thereof by any other person as well as any prior easements or licenses therein. Nothing in this License shall be deemed to extinguish or otherwise interfere with property rights established independently of this License.

D. Licensee shall be subject to all requirements of the City's rules, regulations and specifications, as well as all applicable state and federal laws and regulations. City reserves the right to adopt or amend its ordinances and policies, rules, regulations and specifications to require additional or greater standards of construction, operation, maintenance or otherwise pursuant to the City's lawful police powers.

E. The granting of this License shall not constitute a waiver or bar to the exercise of any governmental right or power of the City, whether now existing or hereafter granted.

### **Section 3. Area of Operation**

A. Subject to the lawful exercise of the police power heretofore or hereafter granted to the City, TMCI shall have the right to construct, operate, and/or maintain, in, on, along and under the Public Ways of the City, wires, cables, remote terminal cabinets, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the City of a Broadband System at such locations designated by TMCI and approved by the City's Public Works Director acting in the exercise of his or her reasonable discretion consistent with the City's technical and permitting regulations.

B. TMCI shall determine whether the facilities constituting the Broadband System shall be located above ground or underground, after consultation with the City's Public Works Director and in compliance with the City's ordinances, policies, rules, regulations and specifications.

### **Section 4. Acceptance; Effective Date; Term**

A. After the City has taken final action to approve the granting of this License, TMCI will file its acceptance with City by countersigning this License. Such acceptance will acknowledge that TMCI agrees to be bound by and to comply with the provisions contained herein. The date that TMCI countersigns this License shall be the Effective Date.

B. The License granted herein will take effect and be in full force from and after the Effective Date and shall continue in full force and effect for a period of five (5) years (hereinafter the "Initial Term"), unless terminated sooner in accordance with the provisions of this License. The Initial Term shall be automatically extended by up to two (2) five-year extensions (each an

"Extended Term") unless either party notifies the other not later than six months prior to the end of the Initial Term or the first Extended Term that the License will not be extended.

#### **Section 5. Conditions on use of Streets and Roads**

A. Prior to any construction, repair or replacement of facilities in City rights-of-way, a permit for such work must be obtained from the City of Globe. As part of this License, no fee will be charged for permits, but the permitting process will allow City staff to be informed of such work and to provide the necessary scheduling of inspections of work in the City rights-of-way. No other fee, charge or assessment of any kind shall be levied or assessed by City on the use, occupancy, operation, replacement or maintenance of TMCI facilities within City rights-of-way.

B. **Trimming/Cutting Trees.** TMCI shall have the right to trim and keep clear of its poles, wires, cables, underground conduits, manholes and other conductors and fixtures, the trees in and along the Public Ways, but such activities shall not unreasonably impede the use of the Public Ways. In the exercise of such right, TMCI shall not cut or otherwise injure any trees to any greater extent than is reasonably.

C. **Restoring Streets, Sidewalks, Driveways, Landscaping and Other Property.** TMCI shall restore reconstruct, or repair any public place, private or public property or Public Way, including but not limited to streets, sidewalks, driveways, landscaping and other similar items, as well as any sewer, gas, effluent, water main, pipe, or fire alarm, disturbed, altered, opened, or destroyed by the exercise of any right granted to TMCI by this License. All repair and restoration necessary to meet the requirements set forth in this Section 5, as well as any and all claims for compensation from third parties as a result of work performed by TMCI, its affiliates, or its contractors shall be promptly commenced at Licensee's sole expense and shall be performed in a manner and with means reasonably acceptable to the City. Unless otherwise permitted by the City, Licensee shall complete such restoration with seven (7) business days following the commencement of restoration. In the event that the City determines that TMCI has not made such restoration, reconstructions, or repair in a reasonably satisfactory manner or in a reasonable time, the City, after giving TMCI no less than ten (10) days' notice and opportunity to correct such failure, shall have the right to carry out such restoration, reconstructions or repair. City may draw upon the security posted by Licensee pursuant to Section 10.C of this License for any failure to promptly reimburse City for such expenses.

D. **Safety.** TMCI shall at all times employ ordinary care in accordance with the City Code and shall install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public, to public property and to private property. All structures and all lines, equipment, and connections in, over, under, and upon the Public Ways, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair. Any opening or obstruction in the streets shall be guarded and protected at all times by placement of adequate barriers, fences, or boarding, the bounds of which will be clearly designated by appropriate warning lights or other warning permitted or required by the City's standards and regulations. TMCI shall have full responsibility for any traffic control required by its work, subject to the City's approval of traffic control plans and practices. The cost for any fees for traffic control shall be the responsibility of TMCI.

E. Compliance with Applicable Laws. TMCI shall install and maintain its wires, cables, fixtures, and other equipment in accordance with applicable law, any building codes, or other construction standards imposed by the City or other regulatory agency and in an applicable manner as shall not interfere with any installations or operations of the City or of any public utility serving the City.

F. Temporary Moving of Wires. TMCI shall, on the request of any person holding a building permit issued by the City, temporarily relocate facilities to permit the moving of buildings, water, effluent, or sewer lines, or Public Ways. Except where the City is the requesting party as a result of a project initiated or paid for by the City, the expense of such relocation shall be paid by the Person requesting the same, and TMCI shall have the authority to require such payment. TMCI shall be given not less than three (3) business days' notice to arrange for such relocation. Where the City is the requesting party the expenses of such temporary relocation shall be at the sole expense and cost of TMCI.

G. Inspection. The City shall have the right to inspect all construction or installation work performed in, over, under and upon the Public Ways, subject to the provisions of this License and make such inspections as it shall find necessary to insure compliances with the terms of this License.

H. Location of Distribution Lines-Poles/Underground Cable. Location of any TMCI pole or structure shall be removed or modified by TMCI whenever the City determines that it is in the best interests of the City or for a public purpose.

I. Moving of TMCI Property. TMCI will upon reasonable notice from the City, protect, support, temporarily dislocate or temporarily or permanently relocate its property in the Public Ways, at no cost or expense to the City, when required by the City or state for a public purpose, whether governmental or proprietary in nature, such as traffic conditions, public safety, street closing or abandonment, sewer construction, highway or street construction, change or establishment of street grade, or any other types of structures or improvements. All expenses in the moving of such property shall be at the sole cost and expense of TMCI.

J. Backup Power. TMCI shall not use a permanent or semi-permanent internal combustion engine (such as gasoline or natural gas powered electric generator) to provide backup power at any point or points on the Broadband System (other than inside buildings or on land owned in fee by TMCI or its affiliate) without City's prior written approval, which approval shall not be unreasonably withheld.

#### **Section 6. Construction and Operation**

TMCI promises and guarantees, as a condition of exercising the privileges granted by this License, that any Affiliate of TMCI directly involved in the offering of Broadband Service in the City or directly involved in the management or operation of System in the City, will also comply with the obligations of this License. To the extent Licensee constructs and installs Facilities in the Public right-of-way, such installation will be subject to the terms and conditions contained herein.

A. TMCI may enter into any agreement with developers, property owners, or residents to serve areas not required to be served, provided that such agreement shall be consistent with the terms of this License.

B. All installation and maintenance by TMCI of electronic equipment shall be in accordance with the applicable sections of the current edition of the National Electric Safety Code and all State as well as all applicable County and City codes, ordinances and regulations.

C. All working facilities, conditions, and procedures, used or occurring during construction and maintenance of the Broadband System shall comply with the standards of the Occupational Safety and Health Administration.

D. Construction, installation and maintenance of the Broadband System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City following accepted construction procedures and practices and working through existing committees and organizations.

E. Any antenna structure used in the Broadband System shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation. TMCI shall obtain a special use permit from the City prior to the installation of any such antenna structure.

F. TMCI will not intentionally interfere with television reception of persons not served by TMCI, nor will the Broadband System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the City. Specifically, TMCI shall not interfere obstruct or hinder in any manner, the City's communications systems, water system, sewer system, fire department system, police department system, public works systems or court system.

#### **Section 7. Service Related Matters**

A. TMCI shall obtain and maintain sufficient telephone lines and staffing so as not to delay unreasonably the answering of any telephone call, and shall adjust TMCI's staffing as necessary, with respect to special events which may reasonably be expected to increase call volume.

B. TMCI shall provide a separate phone number and email address of a management level person for City to contact on service related matters, any such calls by the City shall be returned as promptly as possible and must be returned within one (1) business day. On any complaints provided by City to such contact TMCI shall, within three (3) business days provide City, in writing, with a response and plan of resolution relating to such complaint.

#### **Section 8. Conduct of Operations**

TMCI will render efficient Broadband Service, make repairs promptly, and interrupt Broadband Service only for good cause and for the shortest time possible. TMCI will use reasonable efforts to assure that such interruptions will occur during periods of minimum systems use and shall use reasonable efforts to notify City and any subscribers of planned interruptions. TMCI shall provide City with prompt notice of any known interruptions as well as a good faith estimate of the anticipated interruption time.

## **Section 9. City Connections**

A. TMCI shall not be obligated to build its Broadband System or install access distribution points for the sole purpose of providing service to City offices and buildings; provided, however, that TMCI shall provide Basic Broadband Services to existing or future City offices or buildings, at no charge to the City, when all of the following conditions for the installation and provisioning of subscriber units/subscriber modules (SU/SM) have been met:

1. SM/SU shall be within 1.5 miles and in Line of Sight Conditions towards the serving Access Point (AP) or Base Station (BS);
2. SM/SU and AP/BS shall have a receive signal level of -65 dBm (+/- 3dB) to assure proper operation at a proper Modulation and Coding Scheme (MCS) that will determine the maximum obtainable capacity; and
3. SM/SU and AP/BS shall have a minimum Signal to Noise Ratio (SNR) of 20 dB,

and the City office or building is not already receiving similar services from another licensed broadband provider.

If line of sight service cannot be provided, then Basic Broadband Services shall only be provided to the City office or building if the office or building is within three hundred (300) cable feet of an access distribution point providing Basic Broadband Services.

For purposes of this Section 9, "Basic Broadband Service" shall mean broadband service at the speed of up to 10 Mbps up and up to 10 Mbps down and shall be equivalent to or greater than TMCI's 10/10 Business Lite service which may be marketed under a different or similar product name to be determined at a future date.

B. Interference created by other users or external devices is outside of TMCI responsibility. TMCI will use its best efforts to control interference but cannot guarantee resolution. Manipulation of the parameters, configuration and installation of SM/SU by end user or third party is outside of TMCI responsibility and may lead to improper operation of the system and affect the network as a whole.

## **Section 10. Insurance, Indemnification, Letter of Credit, and Performance Bond**

A. Defense and Indemnification. TMCI shall fully defend, indemnify, and hold harmless the City, its officers, boards, commission, elected officials agents, officers, attorneys, representatives, servants, and employees (for purposes of this Section 10.A, the "City") against any and all costs damages, expenses, claims, suits, actions, liabilities and judgments for damages including but not limited to expenses for legal fees (a "Claim"), whether suit be brought or not and any all disbursements and liabilities incurred, assessed, or assumed by City in connection with:

- a. Damages to persons or property in any way arising out of or through the alleged acts or omissions of TMCI its servants, officials, agents, affiliates, attorneys, representatives, servants or employees;
- b. Requests for relief arising out of any alleged action or inaction by TMCI which results in a claim for invasion of privacy, defamation, for the violation 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 or alleged to have arisen out of TMCI's failure to comply with the provisions of this License or any federal, state or local law, or any regulation applicable to TMCI or the Broadband System; or

d. Any and all disputes arising out of a claim by any party other than the City or TMCI wherein damages or other relief is sought (a) as a result of the City's licensing of TMCI or (b) as a result of the renewal or non-renewal of TMCI's license to provide services within the City;

provided, however, that TMCI's indemnification obligation shall not apply to any Claim or element of a Claim to the extent caused by the gross negligence or willful misconduct of the City.

City shall cooperate with TMCI and reserves the right to participate in the defense of any claim or litigation. If a lawsuit or claim covered by this Section 10.A be brought against the City, either independently or jointly with TMCI, or with any other person or municipality or entity, TMCI shall defend City at TMCI's sole cost and expense. If a judgment is entered against the City, TMCI shall indemnify City and pay such judgement and all costs and shall satisfy and discharge the same. TMCI shall not settle any matter to which indemnity may apply without the City's written consent, which shall not be unreasonably withheld.

By accepting the rights conferred in this License the City is in no manner waiving any governmental immunity it may enjoy or any immunity on behalf of its agents, officials, servants, attorneys, representatives or employees.

B. Insurance. TMCI shall at all times during the term of the License, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of A-VII or greater;

a. Workers' compensation insurance with statutory limits as required in the State of Arizona. Employer's liability insurance with limits of not less than \$100,000 each accident.

b. Comprehensive Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the performance of this License, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products/completed, operations, unfair competition, copyright infringement, trademark, patent infringement, and contractual liability with respect to the liability assumed by TMCI hereunder. The limits of the insurance shall not be less than:

Each Occurrence	\$2,000,000
Products-Completed Operations Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Copyright, Trademark, and Patent Infringement	\$1,000,000
All other perils	\$2,000,000
General Aggregate Limit	\$2,000,000

c. Comprehensive Automobile Liability Insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with the performance of this License, with limits of at least \$2,000,000 per occurrence for bodily injury and property damage. Coverage shall be at least as broad as "any auto" coverage (Insurance Service Office, Inc. Policy form CA 00 01 03 06 or any replacements of such form.

d. The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. TMCI shall forward to the City certificate(s) of such insurance upon execution of this License and upon any renewal of such insurance during the term of this License. The certificate(s) shall provide that (1) the City; its officials, officers and employees be named as additional insured(s) as their interest may appear with respects this Agreement; (2) forty-five (45) days prior written notice of cancellation of the policy(s) shall be provided to the City, (3) coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by the City. At the request of the City Manager, the City may increase the amount of coverage no more frequently than every three (3) years to reflect changes in the Consumer Product index to ensure full protection of the City and public provided, however, that TMCI shall have six (6) months from the date of notification to comply with any increase.

C. Security.

a. TMCI shall, prior to any work commenced within the Public Ways throughout the Term of this License, deposit with the City, a form of security (such as an irrevocable letter of credit or a bond) reasonably acceptable to the City (the "Posted Security"). For work in the Public Ways that is not the subject of an awarded contract, and for which the form of Posted Security is an irrevocable letter of credit, the amount of the Posted Security shall equal one-hundred and twenty-five percent (125%) of an engineer's estimate of the cost of the work. For work in the Public Ways for which a contract has been awarded, the amount of the Posted Security shall equal the amount of the awarded contract.

b. Notwithstanding the foregoing provisions of Section 10.C.a of this Agreement, for work that is not the subject of an awarded contract for which the engineer's estimate of the cost of the work is less than \$50,000 ("Security Floor") and for work that is the subject of an awarded contract for which the cost of the work is less than the Security Floor, no Posted Security shall be required.

c. If the City is not able to pursue a claim against Posted Security (a "Security Floor Barred Claim") because of the Security Floor, the City may nevertheless pursue an indemnity claim against TMCI pursuant to Section 10.A of this Agreement by notifying TMCI in writing of such claim. Upon receipt of such notice, TMCI shall correct the condition or make the repair to the Public Way that is the subject of the Security Floor Barred Claim within thirty (30) days or, if the correction or repair cannot be completed within such thirty (30) day period, TMCI shall commence the correction or repair within thirty (30) days and diligently pursue the correction or repair until completed. If TMCI fails to correct the condition or make the repair within the time limits stated in the immediately

preceding sentence, the City will have the right to pursue any and all rights under Sections 10.A and 10.B of this Agreement. In such event the Security Floor thereafter shall be reduced by fifty percent (50%). Such fifty percent (50%) reduction shall occur each time that the City notifies TMCI of a Security Floor Barred Claim and the City is required to pursue a remedy under Sections 10.A or 10.B of this Agreement.

d. In the event the Posted Security is in the form of an irrevocable letter of credit, the Posted Security shall be issued by a federally insured commercial lending institution. In the event the Posted Security is in the form of a bond, the Posted Security shall be issued by a surety licensed to do business in Arizona. The Posted Security shall be used to assure the faithful performance of TMCI of all provisions of this License and compliance with all orders, permits, and directions of any agency, commission, board, department, division or office of the City concerning the work in the Public Ways, including (without limitation) the cost or removal or abandonment of any property of TMCI and the failure of TMCI to promptly repair or restore the Public Ways or any other public or private property damaged, opened, or altered by the actions of TMCI or its contractions or agents.

#### **Section 11. License Fees and Taxes**

A. TMCI will pay to the City quarterly, within forty-five (45) days following the end of each quarter, an amount equal to five percent (5%) of TMCI's quarterly Gross Revenues for the prior quarter ("License Fee"). TMCI shall, with each quarterly payment, provide an accounting to the City of its calculation of the License Fee and shall expressly set forth any allowed deductions, offsets, discounts, or other deductions TMCI used to calculate the License Fee. City has the authority, at City's expense, to conduct an audit of TMCI at any time during the duration of this License to determine compliance of TMCI under this License. The audit shall be conducted in such a way as not to disrupt TMCI's business operations. All pertinent records of the TMCI are subject to an audit conducted by the City. The City may determine the scope of audit in each audit conducted. This audit shall not be required more than once in a single twelve (12) month period. License Fee payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by City in any way associated with Licensee's use of the Public Ways of the City, including but not limited to, the construction of Licensee's facilities hereunder or for inspections thereof during the term of this License.

B. Of the License Fee paid to and collected by the City, Forty Percent (40%) thereof (i.e. 2% of the 5%) shall be placed by the City in a separate account to be designated the "TMCI Relocation Expense Account." During the term of this License Agreement, such payments made during the immediately preceding four (4) calendar quarters shall be available to be drawn down by TMCI to pay for TMCI's obligations to pay the cost of relocating its facilities under Sections 5.F., 5.H., 5.I. or 18 of this License. Any funds on deposit in the TMCI Relocation Expense Account for more than the immediately preceding four (4) calendar quarters shall become the property of the City. Invoices for reimbursement from the TMCI Relocation Expense Account shall be submitted to the City no later than ninety (90) days after the date TMCI pays for or incurs the expense for which TMCI requests reimbursement. Any unused funds in the TMCI Relocation Expense Account at the expiration or termination of this License, and following the completion of TMCI's relocation obligations under Section 18, if any, shall become the property of the City.

C. Notwithstanding any provision to the contrary, TMCI shall, in addition to the License Fee described above, pay the following charges, taxes and fees as established in a code, resolution or ordinance properly adopted by the City: general ad valorem property taxes; transaction privilege and use tax or other taxes of general applicability authorized by law and collected by TMCI for its retail sales from users and consumers of its services or products within the present and any future corporate limits of the City; business license fee and other charges, taxes, or fees levied upon businesses generally through the City provided that the annual amount of such fee does not exceed the amount of similar fees paid by any other similarly situated business operated within the City. TMCI shall be entitled to pass such fees, taxes and charges directly to the subscribers in the City as provided for in the Cable Act.

D. If TMCI requests the expedited review of any permits required for construction and inspection fees and if City agrees to such expedited review which it may do or withhold at its sole discretion, any and all costs associated with such expedited review shall be borne by TMCI and shall not be offset against the License Fee.

E. Licensee shall bear all costs associated with damage caused to public streets, roads, alleys, landscaping, street lights, traffic signals, or other property associated with the construction, repair, maintenance, and operation of its facilities. Such costs shall not be offset against the License Fees.

F. If TMCI fails to timely pay the License Fee or any portion thereof, TMCI shall also be responsible for a late payment fee equal to ten percent (10%) of the unpaid fee for each month or portion thereof the fee is late.

#### **Section 12. Rates**

TMCI shall apply its rates in accordance with applicable law, and, to the extent required, with similar rates and charges for all subscribers receiving similar Broadband Service without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability. Nothing herein shall be construed to prohibit TMCI from:

1. The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns of one (1) year or less;
2. The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or
3. The establishment of different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations.

#### **Section 13. Records and Reports**

A. Copies of all petitions, applications and communications submitted by TMCI which are directly related to TMCI operation of the Broadband System in the City to any court or agency shall be submitted to the City upon written request.

B. Once each year, upon request by the City Manager, TMCI shall brief the City Manager of all major activities applicable to its operation during the preceding twelve month period. At the briefing TMCI shall submit a report that details the number of subscribers served within the City for each type of Broadband Service or bundled service offered, a detailed report of planned operations involving work within the City's Public ways during the next twelve month period, a breakdown of License Fees and other fees payable to the City during the previous twelve months, and such other information as the City Manager may reasonably request be provided during the briefing.

C. Subject to the duty of the City to treat certain books and records as confidential pursuant to this Section 13.C., the City shall have the right, at its own expense, and upon at least three (3) working days prior written notice, to inspect at TMCI's offices located at 10 Telecom Lane, Peridot, AZ 85542 during normal business hours, all books and records directly related to TMCI's License Fee and TMCI's applicable tests and customer service reports provided to the FCC. The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under state or federal law, to the extent TMCI makes the City expressly aware of such confidentiality and to the extent permitted by Arizona law. TMCI shall be responsible for clearly and conspicuously stamping the word "confidential" on each page that contains confidential or proprietary information and shall, at the request of the City, provide a written explanation as to why such information is confidential under state or federal law, along with citations to the relevant statute or rule protecting such information. To the extent such information is protected by State or Federal law, the City will not disclose to the public or to competitors of TMCI any commercial or financial information reviewed by the City pursuant to this License Agreement. To the extent the City receives a request for information and believes it must disclose any material marked "Confidential" pursuant to the paragraph the City shall, so far as reasonably possible, notify TMCI in advance of disclosure to allow TMCI to take appropriate steps to protect the information. If requested by TMCI, and subject to TMCI's obligation to defend and indemnify the City, and subject to the Arizona Public Record Act, City agrees that it shall not permit access of any books or materials marked confidential until otherwise ordered by a court or agency of competent jurisdictions. Nothing herein, however, shall limit the City's ability to use any books or records, however designated, as reasonably required by the City in enforcing its rights under the License.

D. Unless restricted pursuant to state or federal law, TMCI shall at all times keep full and complete plans and records showing the exact location of all Broadband System equipment installed or in use in the Public Ways or other public or private property and make them available for the City for review upon request. TMCI shall provide to the City, upon the request of the City Manager, maps showing the location of all facilities in the Public Ways in an electronic format compatible with the City's electronic format.

#### **Section 14. Transfer or assignment of License**

TMCI shall not sell, assign, or transfer this License to another party, person, or entity, without first receiving the prior written consent of the City, which shall not be unreasonably withheld; provided however, the City reserves all rights under applicable federal law to conduct a review of the potential buyer or transferee and to require the proposed assignee to demonstrate that the transfer will not cause any increased risks of non-performance under the License or any loss of the City of its consideration under the License. Notwithstanding anything to the contrary, an

assignment of the License to an affiliate of the Licensee, or any other TMCI entity controlling, controlled by or under common control with TMCI, shall not require the consent of the City, nor shall any internal corporate reorganization or restructure that involves Licenses or the hypothecation is whole or in secure its mortgage or other indebtedness require consent of the City.

#### **Section 15. Termination; Cancellation**

A. Each party hereto reserves the right, after notice to the other party and the opportunity of the other party to cure any alleged violation of this License within thirty (30) days following notice of the act or omission that breaches any term of condition of this License, to terminate and cancel this License and all right and privileges hereunder in the event that the other party:

- a. Willfully fails to reasonably carry out any provision of or obligation under this License.
- b. Becomes insolvent, unable or unwilling to pay its debts, or is adjudicated bankrupt.

B. Such termination and cancellation shall be by resolution duly adopted after sixty (60) days' notice to the breaching party.

#### **Section 16. Force Majeure**

With respect to any provision of this License the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon TMCI, or which allows for termination by either party under Section 15, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike, or other events, the occurrence of which was not reasonably foreseeable by TMCI and is beyond TMCI's reasonable control.

#### **Section 17. Emergency Work**

City reserves the right to move, remove, or damage any portion of TMCI's or its Affiliates equipment and facilities as may be required in an emergency as determined by the City. In such event neither City nor any agent, contractor or third parties will be responsible for any damages caused. Prior to taking any action pursuant to this Section the City shall provide, if feasible, reasonable notice to TMCI of the emergency to allow TMCI the opportunity to protect or repair its facilities involved in the emergency.

#### **Section 18. Removal and Abandonment of Broadband System**

If the use of a substantial part of the Broadband System is discontinued for any reason for a continuous period of twelve (12) months or if such Broadband System or property has been installed in any street or public place without complying with the requirements of this License, or if this License has been terminated, canceled, or has expired without renewal, TMCI shall promptly, upon thirty (30) days' notice from the City Manager, remove from the Public Ways or other public or private property all such property other than any underground property that the City Manager may permit to be abandoned in place. Upon removal TMCI shall promptly restore such Public

Ways to a condition reasonably acceptable to the City Manager. Any property remaining in place one hundred eighty days after notice from the City Manager shall be at the option of the City, considered permanently abandoned. The City may extend such time in its sole discretion. Any property abandoned in place shall, at the election of the City Manager, be removed by TMCI at TMCI's expense, and the Public Way or other public or private property shall be restored to a condition reasonably acceptable to the City Manager. Upon permanent abandonment of the property in place it shall become property of the City and TMCI shall execute and deliver such documents, in a form acceptable to the City Attorney transferring ownership to the City. Nothing herein shall require the City to permit abandonment in place.

**Section 19. Representations and Warranties.**

A. TMCI expressly represents and warrants that upon accepting this License it did so relying on its own investigation and understanding of the power and authority of the City to grant this License and its own review, investigation, and understanding of the permissible provisions of the License under all state and federal laws and regulations.

B. TMCI represents and warrants that it has not been induced to enter into this License by any understanding or promise or other statement whether verbal or written by or on behalf of the City or by any third person concerning any term or condition of this License not expressed herein or in state or federal law.

C. TMCI represents and warrants that it has the power and authority to enter into this License by and through the representative who has signed this License on its behalf, and that it has the power and ability to do all the acts required of it.

D. TMCI represents and warrants that it accepts this License and all of its provisions willingly, without coercion, undue influence, or duress. TMCI has not misrepresented or omitted material facts, has not accepted this License with the intent to act contrary to the provisions herein, and represents and warrants that so long as it operates the Broadband System, it will be bound to the terms and conditions of this License.

E. TMCI acknowledges that it was represented throughout the negotiations of this License by attorneys of its own choosing and has opportunity to consult with its own attorneys about its rights and obligations regarding this License.

**Section 20. Miscellaneous.**

A. The right is hereby reserved by the City to adopt, in addition to the provisions contained herein and in existing applicable resolutions, such additional regulations, ordinances, rules, policies and specifications as it shall find to be in the best interests of the City, provided, however, that such additional regulations, ordinances, rules, policies and specifications shall be reasonable and not materially modify the terms of this License or Licensee's obligations.

B. If any section subsection, sentence, clause, phrase or portion of the License is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

C. The City acknowledges that acceptance of the terms and conditions of this License will not constitute, or be deemed to constitute a waiver, either expressed or implied, by TMCI of any constitutional or legal right which TMCI may have or may be subsequently determined to have either by current or subsequent legislation under applicable Federal and State constitutions and law.

D. Licensee acknowledges that this License is subject to A.R.S. § 38-511.

E. It is mutually understood and agreed that the provisions of this License are subject to applicable federal law, as well as any Arizona law not in conflict with such federal law. This license shall be governed by the laws of the State of Arizona, both as to interpretation and performances. 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 federal court or state court with venue in Gila County, Arizona.

F. In the event that there is a change in law that affects the parties' right or obligations under this agreement, then the parties agree to meet and discuss in good faith the appropriate implementation of that change in law.

G. All notices or correspondence to the served upon the City or TMCI by the other party shall be in writing and delivered by first class mail, postage prepaid or by facsimile or by a national express mail service.

Notices or correspondence to the City shall be addressed as follows:

City Manager

With a copy to: City Attorney

Notices or correspondence to TMCI shall be addressed as follows:

Triplet Mountain Communications, Inc.  
10 Telecom Lane  
Peridot, AZ 85542

With a copy to: Glenn M. Feldman  
Dickinson Wright PLLC  
1850 N. Central Ave. Suite 1400  
Phoenix, AZ 85004

The City or TMCI may designate such other address or addresses from time to time by giving written notice to the other as set forth above.

IN WITNESS WHEREOF, the parties have executed this License as of the 8<sup>th</sup> day of December, 2015.

TRIPLET MOUNTAIN

CITY OF GLOBE, ARIZONA

By: *Freeman O'Connell*  
Mayor

Attest:

By: *Shirley Silva*  
City Clerk

COMMUNICATIONS INC.

By: *Shirley D. Siz*