

**WIRED TELECOMMUNICATIONS LICENSE AND
RIGHT-OF-WAY USE AGREEMENT
BETWEEN THE CITY OF AVONDALE
AND WANRACK, LLC**

This Wired Telecommunications License and Right-of-Way Use Agreement (this “Agreement”) is effective as of February 5, 2018 (the “Effective Date”), by and between the City of Avondale, an Arizona municipal corporation (the “City”) and WANRack, LLC, a Delaware limited liability company (“WANRack”).

RECITALS

A. WANRack obtained from the Arizona Corporation Commission a certificate of convenience and necessity by Decision No. 61737, dated June 4, 1999 (the “CC&N”).

B. WANRack desires the ability to be able to install its Facilities (defined below) within the City’s rights-of-way and/or operate, maintain and repair such Facilities within a portion of the City’s rights-of-way, subject to the requirements of this Agreement.

C. WANRack seeks an agreement to occupy the rights-of-way with empty conduits and use the rights-of-way for non-telecommunication services such as dark fiber leasing.

D. WANRack also desires to obtain from the City a telecommunications license to provide Telecommunication Services.

E. The City is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of such Facilities within the City’s boundaries pursuant to the Avondale City Charter, Avondale City Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to A.R.S. §§ 9-581, 9-582, and 9-583), by the City’s police powers, its authority over public rights-of-way, and its other governmental powers and authority.

F. The City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements in the rights-of-way.

G. WANRack agrees to provide and maintain accurate maps showing the location of all Facilities owned or used by WANRack on public rights-of-way within the corporate limits of the City, and to comply with reasonable mapping requirements as City may establish from time to time.

H. WANRack will secure the appropriate licenses, encroachment and other permits required by the City Code for the placement of its Facilities placed in the City’s boundaries.

J. WANRack has agreed to comply with public property use requirements that City has established and may reasonably establish from time to time in accordance with State and Federal laws.

K. There may be portions of the ROW (the “Third Party Areas”) upon which the Private Plant may not be built without permission (the “Third Party Permission”) from one or more third parties (the “Third Parties”). The Third Party Areas include canal crossings or other areas that have limited ROW dedications or that have regulatory use restrictions imposed by a Third Party.

L. The City retains the right to adopt, from time to time, in addition to the provisions contained in this Agreement, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to protect and promote the property, health, safety and welfare of the City’s inhabitants.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and WANRack hereby agree as follows:

1. Definitions.

ACC means the Arizona Corporation Commission.

A.R.S. means Arizona Revised Statutes.

Backbone means a high-speed network that interconnects smaller, independent networks and is the through-portion of a transmission network (not the spurs that branch off).

Call means the operations required to set up or establish, maintain, and terminate or release a connection through a telephone network in support of a communication between two or more stations. A call comprises a sequence of events that begins when an end user at an originating station initiates a call request to a switch that may work in conjunction with other switches to establish a connection to an end user at a destination station, and concludes when one party (user) terminates the connection.

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

Coarse Wavelength Division Multiplexing (“CWDM”) is a variation of WDM that carries four to eight wavelengths per fiber or more that is designed for short- to medium-haul networks (regional and metropolitan areas).

Commercial Mobile Radio Services means two-way voice commercial mobile radio service as defined by the FCC in 47 U.S.C. § 157.

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

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

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

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

Dark Fiber means fiber optic strands that are not connected to transmission equipment.

Dense Wavelength Division Multiplex (“DWDM”) is a variation of WDM but with much higher bandwidth and density. Using DWDM, up to 80 or more separate wavelengths or channels of data can be multiplexed on a single optical fiber. Each channel carries a time division multiplexed (TDM) signal. Since each channel can carry up to 2.5 Gbps, up to 200 billion bits per second can be delivered by the optical fiber simultaneously.

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

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

Facilities means the plant, equipment, and property used in the provision of communication and telecommunication services and not owned by the City, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under Public Highways.

FCC means the Federal Communications Commission.

Fiber Optic Network is a communication system consisting of an optical transmitter to convert an electrical signal into an optical signal to send into the optical fiber, a cable containing bundles of multiple optical fibers that is routed through underground conduits and buildings, multiple kinds of amplifiers, and an optical receiver to recover the signal as an electrical signal.

Information Service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.

Inner-Duct means a pathway created by subdividing a Duct into smaller channels.

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

Interstate Call means a call in a conventional circuit-switched network that originates in one state and terminates in a different state (or country).

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

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

Manhole means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating and maintaining cable and fiber in a Conduit.

Multichannel Video System includes:

- A. A “cable system,” as the term is defined in Title VI of the Federal Communications Act of 1934, providing service within the City.
- B. An “Open Video System,” as the term is defined in Title VI of the Federal Communications Act of 1934, 47 U.S.C. § 573 and implementing regulations (47 CFR § 76.1500), providing service within the City.
- C. Any other system providing Multichannel Video Programming Services within the City, where the service is transmitted in whole or in part via wires or lines that are in or cross any ROW within the City. The preceding sentence shall apply whether the provider owns, leases or otherwise obtains the right to use the wires or lines, including wires or lines of a telecommunications provider used pursuant to tariff or otherwise for that purpose.
- D. Any other system providing Multichannel Video Programming Services within the City where a license or similar permission or approval from the City is required under applicable law.

For purposes of this Agreement and the license granted herein, “Multichannel Video Programming Services” means multiple channels of video programming where some or all of the video programming is generally considered comparable to programming provided by a television broadcast station or by a direct to home satellite service. Multichannel Video Programming Services specifically includes, but is not limited to, “cable service” as the term is used in Title VI of the Federal Communications Act of 1934.

Parties shall collectively mean the City of Avondale, Arizona and WANRack, LLC.

Point of Presence (POP) means a telecommunications facility where network equipment is located to be used to connect customers to a network backbone.

Provider means a Telecommunications Corporation that constructs, installs, operates or maintains telecommunications Facilities in the City Public Highways.

Public Emergency means any condition which, in the opinion of City officials, poses an immediate threat to the lives or property of the citizens of Avondale or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

Public Highway means all the roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the City.

Public Service Corporation means a corporation engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers. However, a message transmitting company is only a public service corporation if it is a common carrier.

Public Utility Easement means an easement or other real property right that is granted dedicated, reserved or otherwise conveyed for the use of utility facilities, regardless of the language used in creating such right, and regardless of the inclusion of other authorized uses.

Right-of-way (“ROW”) means an area of land, which by deed, conveyance, agreement, easement, dedication, usage or process of law, is reserved or dedicated to the City for public purposes, including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage.

Service Lateral means an underground facility that is used to transmit, distribute, or furnish communications from a common source to an end-use customer.

Telecommunications means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. **However, the term does not include commercial mobile radio services, pay phone services, interstate services, cable services, information services, or the leasing of dark fiber for transmission purposes.**

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

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

Wavelength Division Multiplexer (“WDM”) means a device that combines optical signals from multiple different single-wavelength end devices onto a single fiber. WDM carries two to four wavelengths per fiber.

2. Permission to Use Right-of-Way.

2.1 Grant of License. Subject to the provisions of this Agreement, the Avondale City Code, the Avondale Charter, and Arizona and federal law, City hereby grants to WANRack permission through a telecommunication license to use the designated Use Area portions of the right-of-way (“ROW”) subject to and conditioned upon WANRack’s full, timely, complete and faithful performance of all obligations to be performed or required hereunder by WANRack, and WANRack hereby accepts the terms and conditions of this Agreement.

2.1.1 Use Areas Defined. The Use Areas are the portion of the public utility easements and ROW within the City’s corporate boundaries as shown on Exhibit A, attached hereto and incorporated herein by reference. The ROW is limited to the public street and alley rights-of-way and public utility easements that are owned by City from time to time comprising City’s public utility easement network. The land comprising the ROW will decrease, increase, and otherwise change over time due to abandonments, dedications, annexations, de-annexations, and other events that affect the amount of land included in City’s public utility ROW network inventory. This Agreement shall not allow WANRack to use ROW that is abandoned, condemned, removed from the City’s corporate boundaries, or is otherwise no longer part of the City’s public utility easement network.

2.1.2 Non-Use Areas. WANRack shall not use or occupy any portion of the Use Areas other than as permitted pursuant to this Agreement. The Facilities shall be confined to the Use Areas. The Use Areas do not include any Third Party areas. WANRack agrees that its use of the Third Party Areas is dependent upon Third Party Permission, which permission is outside of the control of the City.

2.2 Conditions of Grant; Permitted Uses. WANRack’s use and occupation of the ROW shall in all respects conform to all and each of the following provisions:

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

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

B. Such additional related uses for which City may give consent from time to time. Such additional uses may only be conducted following City’s giving to WANRack written notice of such consent. City may terminate or impose conditions and limitations on such consent from time to time in City’s sole and absolute discretion.

2.3 Prohibited Uses. All uses of the ROW other than as specifically described in Section 2.2.1 above are prohibited. WANRack may not allow third parties to use the Facilities for any use that WANRack itself does not have the authority under this Agreement. The license granted by this Agreement does not allow WANRack to provide one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmission that may be subject to a cable television or video services system license or franchise. The license does not allow a Multichannel Video System and/or the providing of Multichannel Video Programming Services; the Parties agree that a separate agreement would be needed in order to have such a system or to provide such services.

2.4 Facilities Limited. The authority to install and construct any Conduit System and/or Fiber Optic Networks on City property granted herein authorizes WANRack only to install such Fiber as is necessary to construct and operate the infrastructure described in this Agreement in order to provide the authorized Services and does not authorize WANRack to install or construct any Facilities not expressly provided for in this Agreement.

2.5 Empty Conduit. To the extent that WANRack occupies the ROW with solely empty conduit and/or leased Dark Fiber and/or uses the City's ROW to provide services other than the telecommunication services as defined by A.R.S. § 9-581, such use and/or occupation of the ROW is subject to the terms and conditions of this Agreement and any applicable fees, permits and laws.

2.6 Compliance with Applicable Law. WANRack shall comply with all applicable laws as amended from time to time, including but not limited to, the Avondale City Code and City Charter, and Arizona and federal law, in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for WANRack to comply with any law or regulation of the FCC or the ACC to engage in the business activities anticipated by this Agreement, WANRack shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement; provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

3. Non-Exclusive Rights/Priority Rights.

3.1 Non – Exclusive Grant. This grant is not exclusive and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm or corporation, or construed to deny to or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

3.2 Subject to City's Use or Occupancy. Any and all rights granted to WANRack shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or persons, and to manage City's own facilities. Any and all rights to occupy the ROW granted to WANRack shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey, create or vest a perpetual real property interest in land to WANRack, including any fee or leasehold interest, easement, or any franchise rights.

3.3 Subject to Others' Use or Occupancy. Any right or privilege claimed pursuant to this Agreement by WANRack for any use of any public ROW shall be subordinate to: (A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; (B) any prior lawful occupancy or use thereof by any other person; and (C) any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

3.4 City's Modification Rights. Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its Facilities and/or the ROW, and for that purpose to require WANRack, at no expense to the City, to remove, relocate or abandon in place WANRack's Facilities in order to accommodate the reasonable activities of the City. The City shall not be liable for lost revenues sustained by WANRack, however caused, because of damage, modification, alteration, or destruction of its Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations and do not result due to the City's gross negligence or willful misconduct.

3.5 Condition of Use Areas. The Use Areas are being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.

3.6 Rights Reserved to City. There is hereby reserved to City every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful code ordinance, resolution, regulation, standard or requirement of any kind imposed by the City; WANRack by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of City. The reserved rights include the right to use and allow other Competing Users (defined in Subsection 3.6.1 below) to conduct Competing Activities (defined in Subsection 3.6.2 below) at any location upon the Use Areas.

3.6.1 Competing Users. Water/waste/storm pipes, pavement, fiber, telephony, electric lines, cable and other facilities may all be located within the same segment of ROW with portions of the Facilities. WANRack accepts the risk that the City and others (the "Competing Users") may now or in the future install their facilities in the Use Areas in locations that make parts of the ROW unavailable for WANRack's use. The Competing Users include without limitation, the City, the State of Arizona and its political subdivisions, the public, and all manner of utility companies and other existing or future users of the Use Areas.

3.6.2 Competing Activities. WANRack accepts the risk that there may now or in the future exist upon the Use Areas all manner of work and improvements upon the Use Areas (the "Competing Activities"). The Competing Activities include, without limitation, any and all laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning or other dealing with any or all of the

following, whether above, upon or below the surface of the Use Areas and whether occasioned by existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land:

A. All manner of streets, alleys, signs, sidewalks, trails, ways, traffic control devices, tunnels, trains and gates of every description, and all manner of other transportation facilities and their appurtenances.

B. All manner of pipes, fiber, wires, cables, vaults, cabinets, conduits, sewers, pumps, valves, switches, conductors, connectors, poles, supports, anchors, access points and guys of every description, and all manner of other utility facilities and their appurtenances.

C. All manner of canals, drains, bridges, viaducts, overpasses, underpasses, culverts, markings, balconies, porches, overhangs and other encroachments of every description and all manner of other facilities and their appurtenances.

D. All other uses of the ROW that the City may permit from time to time.

3.6.3 City's Rights Cumulative. All of the City's reserved rights under various provisions of this Agreement shall be cumulative to each other.

3.6.4 Use Priorities. This Agreement does not grant to WANRack or establish for WANRack any exclusive rights or priority in favor of WANRack to use the Use Areas. WANRack's use of the Use Areas shall be subordinate to all Competing Activities. WANRack shall not obstruct, impede, disrupt or interfere with or prevent any Competing User from using the Use Areas.

3.6.5 Regulation. The City shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require WANRack to cooperate and participate in implementing such resolutions. Without limitation, the City may take any or all of the following into account in regulating use of the Use Areas:

A. All timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for Competing Activities.

B. All other factors the City may consider relevant, whether or not mentioned in this Agreement.

C. Differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to Competing Users and Competing Activities.

3.6.6 Disruption by Competing Users. The City and its agents, contractors or employees shall not be liable to WANRack, its customers or third parties for any service

disruption or for any other harm caused them or the Facilities due to Competing Users or Competing Activities.

3.6.7 Emergency Disruption by City. The City may remove, alter, tear out, relocate or damage portions of the Facilities in the case of fire, disaster, or other emergencies if the City Manager or designee deems such action to be reasonably necessary under the circumstances. In such event, the City and its agents, contractors or employees shall not be liable to WANRack or its customers or third parties for any harm so caused to them or the Facilities. When practical, the City shall consult with WANRack in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Facilities. In any event, the City shall inform WANRack after such actions. WANRack's work to repair or restore the Facilities shall be Relocation Work as set forth in Section 11 below.

3.6.8 Public Safety. If the Facilities or any other WANRack equipment, improvements or activities within the Use Areas present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or without the Use Areas, or to the City's ability to safely and conveniently operate the ROW or perform the City's utility, public safety and other public health, safety and welfare functions, then WANRack shall immediately remedy the hazard, comply with the City's requests to secure the Use Areas, and otherwise cooperate with the City at no expense to the City to remove any such hazard or impediment. WANRack's work crews shall report the Use Areas within two hours of any request by the City under this subsection.

4. Notice of Other Users.

4.1 Third Party Contracts. WANRack may enter into contracts with unrelated third parties ("Users") in the ordinary course of WANRack's business for use of the Conduit Systems and/or Fiber Optic Networks within the portions of the ROW subject to this Agreement. Such contracts ("User Contracts") shall be subject to all requirements and provisions of this Agreement and the following:

4.1.1 User Contract Required. No person shall transmit voice, video or data over the Fiber Optic Networks or otherwise use the Conduit System(s) except under a User Contract with WANRack; the identity of such Users must be disclosed to the City upon request but such information will be considered Confidential and Proprietary under Section 30.3.2. All User Contracts shall prohibit such Users from performing any construction, maintenance, repair or other work of any description in the ROW related to the Fiber Optic Networks or Conduit System(s), unless such Users have an agreement with the City.

4.1.2 User Work in ROW. Such Users shall not perform any construction, maintenance, repair or other work of any kind in the ROW related to the Fiber Optic Networks or Conduit System(s) unless: (A) the User Contract provides for the User to construct, install, operate or maintain any portion of the Fiber Optic Networks or Conduit System(s) within the route in the ROW; and (B) the User has entered into an Agreement with the City for use of the City's ROW.

4.2 WANRack Responsible for Third Party Users. WANRack shall cause to comply with this Agreement all persons using the ROW through or under WANRack or this Agreement. WANRack is responsible for any violations of this Agreement by persons using the ROW through or under WANRack or this Agreement.

4.3 Dark Fiber Leases. Should WANRack lease Dark Fiber or Conduit to a User within the ROW, WANRack shall inform the City within 45 business days of the location and length of the Dark Fiber or Conduit route that is being leased through an indefeasible right of use agreement or similar contractual arrangement. A pro-rated ROW use fee will be calculated from the installation date to the anniversary date of this Agreement and such amount will be added on to the annual fee that will be due on the anniversary date of this Agreement. This additional footage will be added to any current leased Dark Fiber or Conduit footage and used in the calculation of the total annual fee owed on the anniversary date of this Agreement. Identification of the Dark Fiber lessee will be kept confidential to the extent allowed by law. If there is a public records request for such information, City will contact WANRack to allow it an opportunity to seek judicial relief to prevent the disclosure of the lessee's identity.

5. Description of the Services and Routes.

5.1 WANRack's Authorized Uses. WANRack's CC&N only authorizes it to provide local exchange service and all intraLATA telecommunication services in Arizona.

5.2 New Facilities. WANRack intends to deploy the new fiber optic facilities to existing and planned Agua Fria Union High School District #216 sites within Avondale and the entire portion of the Fiber Optic Network in Avondale will then be available for telecommunication services and the leasing of Dark Fiber and Conduit.

6. Regulatory Conditions Relating to Right-of-Way Usage. For purposes of this Agreement, whenever work is done in the ROW relating to any of the Facilities, WANRack agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all of its Contractors and that the obligations of Sections 6 and 7 are imposed on both WANRack and any of its Contractors, who will be considered WANRack's agents and for whom WANRack will be responsible. WANRack will ensure that WANRack and its agents comply with Public ROW use requirements as follows:

6.1 Registration. WANRack agrees to register with the City by completing an application or renewal application form and paying the applicable application fee.

6.2 Notice of Changes. WANRack shall file a proposed amendment to the registration before it makes any change that would render the registration information incomplete or inaccurate. A change of WANRack's name or address must be filed at least 10 days prior to the date the change becomes effective; a change in the telephone number must be filed 10 days before the change becomes effective.

6.3 Facilities Construction. WANRack is completely responsible for ensuring that its Facilities are constructed, installed, operated and/or maintained in accordance with the Avondale City Code and established practices with respect to such public ROW and easements. The

proper permits must be applied for prior to commencing any work, and the terms and conditions of such permits must be strictly followed.

6.4 Plan Approval. WANRack's use of the public ROW and easements under the control of the City shall be according to plans approved by the City Engineer, provided that such approval shall not be unreasonably withheld or delayed.

6.5 Interference Minimized. The Facilities to be constructed, installed, operated, maintained, upgraded and removed hereunder, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within said public ROW and easements, including Competing Activities. Any phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Facilities shall be subject to regulation by the City.

6.6 City's Reserved Powers. WANRack and its agents shall be subject to the City's exercise of such police, regulatory and other powers as it now has or may later obtain, and WANRack may not waive the application of the same. City shall have continuing jurisdiction and supervision over any Facilities located within or on public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the City Manager or designee to interpret, administer and enforce the provisions of this Agreement.

6.7 Signs. All signage is prohibited except in compliance with the following requirements:

6.7.1 Signs Required. WANRack shall install and thereafter maintain all signs and markings that the Facilities and WANRack's activities may make necessary for safe use of the Use Areas by the public, the City, WANRack and other persons who may be at the Use Areas at any time for any reason.

6.7.2 Signs Covered. This Section 6.7 shall apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.

6.8 Lighting. Lighting is prohibited except as this Agreement may specifically allow for construction activities.

6.9 Noise. Except during approved construction, noise at the Use Areas is subject to the following limitations:

6.9.1 No Amplified Sound. Except for vehicle backup alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited.

6.9.2 Sound Control Devices. All equipment must be equipped with appropriate mufflers and other sound control devices.

6.10 Governmental and Neighborhood Relations. WANRack shall conduct its activities in coordination with the City as necessary to maintain good relations with all third parties, governmental and other entities having jurisdiction over the Use Areas, all other

occupants of the Use Areas, and the occupants of surrounding real property. WANRack shall immediately notify the City in writing of any actual or threatened dispute, violation or other disagreement with other utilities or users relating to the Use Areas. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Use Areas): (i) State of Arizona (ii) Maricopa County (iii) Bureau of Reclamation (iv) Central Arizona Water Conservation District, (v) Salt River Project. Notwithstanding WANRack's obligations under this Section 6.10, WANRack is not an agent for the City.

6.11 WANRack's Agent. WANRack shall at all times retain on call available to the City by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Facilities and who shall be authorized to represent and act for WANRack in matters pertaining to all emergencies and the daily operation of the ROW and all other matters affecting this Agreement. WANRack shall also provide notice to the City of the name, street address, electronic mail address, and regular and after-hours telephone numbers of a person to handle WANRack's affairs and emergencies related to the ROW. Any change shall be given in writing in the manner stated for notices under this Agreement.

6.12 Coordination Meetings. WANRack shall meet with the City and other ROW users from time to time as requested by the City to coordinate and plan construction on the ROW and all matters affected by this Agreement.

6.13 Regulatory Approval Process. The building permit processes, ROW management and similar regulatory requirements that apply to WANRack's Facilities are completely separate from the requirements of this Agreement. WANRack's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. WANRack's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. WANRack must make all submittals and communications regarding the requirements of this Agreement through the City's contract administrator for this Agreement, and not through planning, building safety or other staff. WANRack must obtain all approvals in accordance with all present and future City codes, policies and procedures.

6.14 Relationship of Plans Approval to Regulatory Processes. WANRack's submission of plans under this Agreement, the City's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. Building permits, zoning clearances, or any other governmental reviews or actions do not constitute approval of any plans for purposes of this Agreement.

7. Plan Approval, Permits, and Inspection.

7.1 Required Approvals. No Facilities shall be installed, constructed, located on, or attached to any property within the corporate limits of the City until WANRack has applied for and received approval for permits from the City. WANRack shall be solely responsible for any and all acts, errors, omissions and negligence of its Contractor(s) who are involved in the

installation, construction, maintenance, repair, location, relocation and any other activity involving WANRack's Facilities subject to this Agreement. Additionally, WANRack and its Contractor(s) shall comply with all other provisions of the Avondale City Code, including but not limited to Chapter 21 regarding streets and sidewalks, and other applicable City and/or Maricopa County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to WANRack's use of the public ROW as may be deemed best for the public interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW.

7.2 Permits; Licenses. WANRack shall submit the applicable Permit Application(s) together with the details, plans and specifications for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this Agreement. WANRack and/or its Contractor(s) shall abide by all stipulations of all licenses and permits issued. If WANRack desires to change the location of any portion of the Conduit System(s) and/or Fiber Optic Network(s), including any related Facilities or equipment, from that set forth in the initial Permit Application, WANRack shall apply for and obtain approval for an amendment to the permit prior to installation or construction.

7.3 Multiple Permit Policy. The City may issue reasonable policy guidelines to all licensees/users to establish procedures for determining how to control issuance of engineering permits to multiple licensees/users for the same one mile segments of their Facilities. WANRack agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City to coordinate the issuance of multiple engineering permits in the same one mile segments.

7.4 Approval; Denial. City will approve or deny such applications based on the availability of space at the location sought by WANRack, safety and other considerations in accordance with the City Code, applicable ROW construction regulations and other applicable law. WANRack and/or its Contractor(s) agree to comply with the terms of any City-issued licenses and permits.

7.5 Construction Standards. Any new Conduit or other Facilities placed in the ROW will be constructed using industry standard horizontal directional drilling and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. WANRack and/or its Contractor(s) will install any new Conduit and access points (manholes/pull boxes) using industry standard practices and in full compliance with Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG Specifications"), the City's supplements to the MAG Specifications, and the City of Avondale General Engineering Requirements.

7.6 System Component Changes. If WANRack desires to change the components of any of the Fiber Optic Network and such would require WANRack to obtain a permit, written approval of such change must be obtained from the City.

7.7 Specifications. The City shall have the right to inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it shall find necessary to meet City standards as set forth in the City of Avondale General Engineering Requirements and the MAG Specifications and the City of Avondale Supplements thereto, and to ensure compliance with the terms of this Agreement and other pertinent provisions of law.

7.8 New System Installation. Any new Conduit system(s) and/or Fiber Optic Network(s) shall be installed as agreed upon by WANRack and the City. If portions of this project will take place on the major arterial streets in City, WANRack and City will work to minimize the inconvenience to the citizens of City and others who use those major arterial streets impacted by the project by developing segments of the project to be completed in sequence.

7.9 Minimal Interference with City Uses. Any Conduit systems and/or Fiber Optic Network(s) to be constructed, installed, operated and maintained under this Agreement shall be located or relocated so as to interfere as little as possible with traffic, existing utilities or other authorized uses over, under or through said streets and public ways. WANRack shall not install, operate, or allow the use of equipment, methodology or technology that may or would unreasonably interfere with the optimum effective use or operation of City's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying receiving or transmitting equipment). If such unreasonable interference should occur, WANRack shall immediately discontinue using the equipment, methodology or technology that causes the interference until WANRack takes corrective measures to alter the Fiber Optic Network(s) to eliminate such interference. Any such corrective measures shall be made at no cost to City. WANRack shall be responsible to ensure compliance with this Agreement by all persons using the ROW through or under WANRack or this Agreement.

7.10 Co-location. WANRack's installation of the Facilities shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along with WANRack's route as set forth in this Agreement. All installations of cable and/or fiber shall be in Conduit or Inner-duct as reasonably approved by the City Engineer or authorized designee; provided, however, nothing herein shall require WANRack to incur any additional expense to accommodate common installations.

7.11 Facility Location Street Opening. Although the exact placement and location of any additional Facilities shall be determined by City through the permit process, WANRack has expressed its intent and City has expressed its desire to have any Facilities installed outside of the paved street areas whenever such location is feasible and reasonable. Further, if it is the intent and desire of WANRack for the Conduit System to be placed by horizontal directional drilling under such streets when feasible and reasonable; bore profiles based on vacuum pothole information shall be part of the engineered plans submitted to the City. Arterial streets shall not be bored unless approved by the City Engineer or authorized designee.

7.11.1 Street Opening Surcharge. In the event that a street opening in new pavement or resurfaced pavement cannot be avoided, WANRack agrees to pay a reasonable surcharge fee to cover damages and early deterioration will be assessed for cutting new or resurfaced pavements less than seven years old.

7.11.2 Closure Requests. Whenever WANRack or its Contractors shall cause any opening or alteration to be made for any purpose in any public streets, or public places, the opening or alteration shall be completed and restored with due diligence within seven business days or such time as allowed by the City Engineer. WANRack shall, upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by WANRack or its Contractors to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

7.12 WANRack Representative. WANRack shall also provide and identify a representative, such as a project manager, who shall be the contact person for the City during any construction periods.

7.13 Neighbor Notification. Prior to the start of any construction work, WANRack shall provide written notice to the businesses and/or residences adjacent to the work being done. If an emergency requires activity without such written notice, WANRack shall use reasonable best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Upon request, WANRack shall promptly furnish to City documentation of such permission from such other affected property owner.

7.14 Traffic Control.

7.14.1 Regulatory Requirements. All traffic shall be regulated in accordance with: MAG Specifications; the City of Phoenix Barricade Manual, latest edition; the Manual on Uniform Traffic Control Devices; and any special provisions included herein or as part of a permit issued according to this Agreement.

7.14.2 Traffic Representatives. At the time of the pre-construction conference, WANRack shall designate an American Traffic Safety Services Association certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to ensure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

7.14.3 Traffic Control Plan. WANRack shall have the full responsibility and liability for traffic control for work performed by WANRack or its Contractors. WANRack shall submit a Traffic Control Plan to the City's Traffic Engineer for approval at least one week prior to beginning work under this Agreement. It shall be noted that traffic under this Agreement shall include all motor vehicles, bicyclists, and pedestrians. WANRack shall not begin construction until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be

maintained onsite during all phases of construction; the City may cause WANRack to cease construction until the Traffic Control Plan is provided.

7.14.4 Plan Alternatives. During construction it may be necessary to alter traffic control as approved by the City's Traffic Engineer. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the City of Phoenix Barricade Manual, latest edition. The most restrictive manual shall apply. WANRack shall pay any and all applicable barricade fees.

7.14.5 Plan Costs. City will make no payment for traffic control. The cost for any fees shall be WANRack's responsibility.

7.14.6 Damage to City Traffic Control Devices. In the event WANRack or its Contractor(s) damages any traffic signal equipment, traffic signal conduit, loop detectors and/or circuits, it shall have them repaired immediately at its expense by an electrical Contractor that has had traffic signal experience and that is pre-approved by the City. Any damage caused by WANRack or its Contractor(s) or subcontractors that is repaired by the City will be billed to WANRack at two times the cost.

7.14.7 Neighbor Notifications. WANRack shall notify all adjacent or affected residents or businesses at least 48 hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

7.14.8 Pedestrian Access. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by the City's Traffic Engineer.

7.14.9 Speed Limits. Speed limits shall be strictly enforced.

7.15 Clean Up. WANRack and/or its Contractor(s) shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and shall maintain the work and public ROW in a safe, neat and clean condition.

7.16 Safety. WANRack and WANRack's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the infrastructure is being placed, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. WANRack's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve WANRack from compliance with these provisions.

7.17 Blue Stake. WANRack and its Contractor(s) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of WANRack's Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two working days. A copy of the agreement or proof of membership shall be filed with the City Engineer.

8. Hazardous Substances.

8.1 Applicable Law. WANRack's and its Contractor(s)' activities upon or about the ROW shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* or the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.* or any other federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances").

8.2 Toxic Substance Restrictions. WANRack and/or its Contractor(s) shall not produce, dispose of, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

8.1.1 Vehicle Use. Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the ROW. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery.

8.1.2 Batteries. Electric backup batteries.

8.3 Disposal. WANRack and/or its Contractor(s) shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by City.

8.4 Use Restriction. WANRack and/or its Contractor(s) shall not use the ROW in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environment Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this Agreement.

8.5 City Held Harmless. In addition to and without limitation of any other indemnities or obligations, WANRack shall pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW used that is attributable to or directly caused by WANRack, its Contractor(s) or anyone using the ROW under this Agreement.

8.6 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, WANRack shall cause the Use Areas to be visually inspected for any signs of

potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, WANRack shall cause the contractor or other person performing such work to give to WANRack notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend and hold the City harmless against any disturbance in such materials in the course of the contractor's or other person's work. WANRack shall cause any storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by WANRack upon the ROW to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. WANRack shall promptly deliver to the City copies of all reports or other information regarding Toxic Substances.

8.7 Notice to City. WANRack and/or its Contractor(s) shall immediately notify City of any Toxic Substance at any time discovered or existing upon the ROW, whether or not such existence is a result of a violation of this Section 8. WANRack is not responsible for Toxic Substances that may exist at the ROW as long as WANRack's Contractors and/or any other persons using the ROW under this Agreement did not do any of the following: (A) participate in the Toxic Material coming to the ROW; (B) fail to immediately report the Toxic Material to City; (C) participate in spreading or otherwise disturbing the Toxic Material; (D) exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material.

8.8 Acknowledgment of Potential Toxic Substances. WANRack understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. WANRack acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic-Substances containing-materials.

9. On-Call Assistance. WANRack shall be available to staff employees of any City department having jurisdiction over WANRack's activities 24 hours per day, 7 days per week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Network. The City may contact by telephone the network operations center operator at the following phone number 855-482-7225 regarding such problems or complaints, and may use that number in order to reach WANRack at any time for any emergency matter. WANRack shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. WANRack shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence.

10. Mapping Requirement.

10.1 As-Built Drawings. WANRack shall maintain As-Built Drawings of its Facilities located within the ROW and shall furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified by the City) and in hard copy form on an annual basis or upon reasonable request by the City. WANRack shall create and maintain maps of any of its Conduit System and/or Fiber Optic Network routes, new routes, and any above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City. WANRack will also provide surface-location marking of any

of WANRack's Facilities that are located underground within any public ROW within 10 business days of installation. The information provided by WANRack under this section will be accurate to the best of WANRack's knowledge. WANRack shall make every reasonable effort to provide accurate and useful information, and the City acknowledges that the information will be provided on an "as-is" and "as-available" basis. WANRack shall be permitted to remove any information from the drawings provided hereunder that is not required for the City's purposes or is otherwise confidential to WANRack.

10.2 Failure to Provide Updates. If complete updates are not provided in a compatible format, WANRack shall pay the actual, reasonable costs, plus 15% administrative mark-up, the City incurs to update the City's electronic mapping format due to the location or relocation of WANRack's Facilities.

10.3 Incorrect Format Records. In the event WANRack fails to supply records in the City specified format and there is a cost to the City in converting WANRack provided files, WANRack will be responsible for the conversion costs and will pay such costs within 30 days of the date of the bill from the City invoicing the amount due.

10.4 Confidentiality. The files and drawings provided by WANRack to the City shall be considered confidential and subject to the restrictions in Section 30 below and disclosed as a public record only to the extent required by A.R.S. § 39-126.01.

11. Relocation.

11.1 Relocation Costs. WANRack shall relocate at no expense to the City, any Facilities or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose for any City project whenever directed to do so by City. However, to the extent that the City receives funds from any third parties or government entities for a project that requires the relocation of Facilities owned, operated and/or maintained by the WANRack, and subject to multiple licensee relocations, as described in this Section 11.1, the City shall allocate the portion of such funds earmarked for relocating Facilities to reimburse WANRack for the actual cost to relocate its Facilities. If more than one licensee is required to relocate for the same project, and is eligible for reimbursement, any such funds shall be distributed on a pro rata basis based on the total relocation costs of each of the licensees eligible for such reimbursement. WANRack shall not hold the City liable for failure to request or file a claim for any funds for the relocation of the WANRack's Facilities. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. WANRack shall comply with any and all requirements of the Avondale City Code. Within 90 days after service of notice by the City, WANRack shall remove the designated portions of the Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the 90-day period, WANRack shall take reasonable steps to remove the Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City. City agrees to cooperate with WANRack to identify alternate locations where available within the ROW.

11.2 Relocation Permits. WANRack agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating or reconstructing of any portion of its Conduit System(s) or Fiber Optic Network(s) on public property or ROW. Notwithstanding the foregoing, City understands and acknowledges there may be instances when WANRack is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the Facilities. WANRack will maintain any annual permits required by the City for such maintenance and emergency repairs. WANRack will notify City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

11.3 City Self- Help. If the City needs to perform any part of the necessary relocation or removal work that has not been done by WANRack within the time required by the City, it shall be entitled to seek payment for such relocation costs by drawing upon the letter of credit or security fund required by this Agreement pursuant to Section 24 below.

11.4 WANRack Consent. Except as otherwise provided herein, City shall not, without the prior, written approval of WANRack, intentionally alter, remove, relocate or otherwise interfere with any portion of WANRack's Facilities. Any written approval required shall be promptly reviewed and processed by WANRack and shall not be unreasonably withheld.

12. Damage to Public Property.

12.1 Duty to Restore Damage. In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of WANRack's Facilities is required or permitted under this Agreement, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, WANRack, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, to as good a condition as before, in accordance with applicable laws, normal wear and tear excepted; such work shall be completed in a manner reasonably satisfactory to the City Engineer. If WANRack does not repair the damage or disturbance as just described, then City shall have the option, upon 10 days prior, written notice to WANRack, to perform or cause to be performed such reasonable and necessary work on behalf of WANRack and to charge WANRack for the proposed costs to be incurred or the actual costs incurred by the City at City's standard rates, plus a 15% administrative mark-up.

12.2 Emergency Restoration. Notwithstanding the notice provision above, in the event of a Public Emergency, the City shall have the right to immediately perform, without prior, written notice to WANRack, such reasonable and necessary work on behalf of WANRack to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted; such work shall be completed in a manner reasonably satisfactory to the City Engineer. The City shall provide written notice to WANRack of the repairs as soon as practicable after the work has begun. WANRack agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation and/or

removal work, it shall be entitled to seek payment for such repairs, relocation and/or removal costs from WANRack and may draw upon a bond and/or letter of credit or security fund required by this Agreement in full or partial satisfaction of such costs, if payment is not made by WANRack as required by Section 12.3 below.

12.3 Pavement Restoration Costs. For any pavement cuts by WANRack, WANRack agrees to restore the pavement and to reimburse the City for all costs arising from the reduction in the service life of any public road, in accordance with the provisions of Chapter 21 of the Avondale City Code and the fees established by the City pursuant thereto. WANRack agrees to pay amount owed within 30 days from the date of issuance of an invoice from City. Failure to do so shall entitle City to draw upon the letter of credit or security fund and/or performance bond.

12.4 Payment Deadline. Upon the receipt of a demand for payment by City, WANRack shall, within 30 days, reimburse City for any undisputed costs.

13. Public Emergency Disruption by City. City shall have the right, because of a Public Emergency, to take reasonable action, including severing, disrupting, removing, tearing out, digging-up or otherwise damaging and/or destroying WANRack's Facilities without any prior notice to WANRack, if the action is deemed necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director, or designees. In such event, the City and its agents, contractors or employees shall not be liable to WANRack, its Contractors or its customers or third parties for any harm so caused to them or the Facilities, unless such damages are caused by City's gross negligence or willful misconduct. When practical and if possible, City will consult with WANRack in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Fiber Optic Networks. City shall inform WANRack of any actions taken. WANRack shall be responsible for repair at its sole expense of any of its Facilities damaged pursuant to any such action taken by City.

14. Public Safety/Hazard Disruption. If any of WANRack's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety and/or other public health, safety and welfare functions, then WANRack shall immediately remedy the hazard, comply with City's request to secure the route area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment. In the event of a response to a hazard, the City and its agents, contractors or employees shall not be liable to WANRack or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, contractors or employees in responding to such hazard, unless such damages are caused by City's gross negligence or willful misconduct. When practical and if possible, City will consult with WANRack in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or the Facilities involved.

15. Contractors.

15.1 City Approval. The specific independent Contractors and/or subcontractors identified and used by WANRack for the construction activities to construct or expand WANRack's Facilities and service area will need to be approved by the City Engineer or designee prior to issuance of each construction permit, such approval shall not be unreasonably withheld, delayed, conditioned or denied. Any Contractors performing construction work within the ROW or public easements shall comply with all applicable licensing requirements for general contractors in Arizona.

15.2 WANRack Representation Regarding Independent Contractors. WANRack represents and warrants all independent Contractors maintain coverages the same as all the requirements stated herein for WANRack.

16. Legal Workers. If, and to the extent A.R.S. § 41-4401 is applicable to this Agreement, WANRack shall comply with laws regarding workers as follows:

16.1 Warranty of Compliance. WANRack warrants to City that WANRack and all of its Contractors will comply with all federal immigration laws and regulations that relate to their employees and that there is compliance with the E-Verify Program under A.R.S. § 23-214(A).

16.2 Breach of Warranty. A breach of the foregoing warranty by WANRack shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

16.3 Inspection of Records. City retains the legal right to inspect the papers of any employee of WANRack Contractor who works pursuant to this Agreement to ensure that they are complying with the warrant given above.

16.4 WANRack Warranty of Violations. WANRack shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

17. Validity of Agreement. WANRack hereby acknowledges that, as a condition of acceptance of this Agreement, WANRack was required to be represented throughout the negotiations of the Agreement by its own attorneys and WANRack had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. WANRack has reviewed City's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, WANRack acknowledges and accepts the right and authority of City to execute this Agreement and to enforce the terms herein.

18. Term of Agreement. The initial term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until 12:00 a.m. on the date that is the fifth annual anniversary of the Effective Date (the "Initial Term"), unless sooner terminated as set forth in this Agreement.

19. Modification, Renewal, Extension.

19.1 Renewal Process. If WANRack has complied with the Agreement's terms and conditions at the end of the Initial Term, this Agreement shall be renewed for an additional five years (the "Extension Term"), unless either party provides written notice of non-extension to the other party at least 90 days prior to the expiration of the Initial Term. The Initial Term and the Extension Term are referred to collectively as the "Term". Such Extension Term would expire at 12:00 a.m. on the date that is the tenth anniversary of the Effective Date.

19.2 Renewal Fee. WANRack shall pay to City the applicable fee at the time of the submission of the application.

19.3 Agreement Changes. City shall have the right to renegotiate any of the terms from the Agreement that may be required by applicable federal, state or local law or regulations. WANRack understands that the City may adopt future code amendments and/or fee schedules relating to Facilities located within the ROW, which may replace in their entirety the current fees and other costs imposed upon WANRack under this Agreement. WANRack acknowledges the right of the City to adopt and implement such lawful code amendments and/or fee schedules.

19.4 Holdover Term. If WANRack's Facilities remain in the ROW, and WANRack continues to use such Facilities beyond the expiration of this Agreement and continues to pay the annual fees, WANRack shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed 60 days beyond the expiration of the Term or until the date of the first City Council meeting scheduled immediately after the expiration of the Term, and no permits will be issued to WANRack by the City until a new Agreement has been approved by the City Council.

19.5 Expiration of Holdover Term. Failure by WANRack to have a valid Agreement to use the ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the City to WANRack and the liquidated damages amount set forth in Section 32 shall apply. If, however, WANRack has timely filed its application and is in active negotiations with the City prior to the expiration of the Agreement, the City may, in its discretion, grant, extend, or take no action on permits issued to WANRack prior to the expiration of the Agreement.

20. Payments.

20.1 No Rights Waived. By entering into this Agreement, neither party waives any current or future rights reserved under the Telecommunications Act of 1996, including but not limited to, those rights set forth in Sections 253(c), reserving the City's right to manage the public ROW and to require fair, non-discriminatory and reasonable compensation from WANRack for use of the public ROW.

20.2 Payments to City. WANRack shall be solely responsible for payments to City as follows:

20.2.1 Application Fee. WANRack shall pay City an application fee of \$750.00 for the administrative costs involved in the issuance of a telecommunications license, which shall be due at the time of the submittal of the application.

20.2.2 Transaction Privilege Tax. WANRack will owe transaction privilege tax on any qualifying services under the Avondale Tax Code.

20.2.3 Fee for Provision of Interstate Telecommunication Services. A Fiber Optic Network in the ROW that carries interstate traffic between and among WANRack's interstate points of presence exclusive of the Fiber Optic Network used by the local network and the portion of the interstate network that carries intrastate calls is subject to an annual fee based on the number of linear feet of trench in the ROW. The annual fee is \$2.15 per linear foot, which shall be adjusted annually as provided below.

A. Commencing on the anniversary date of this Agreement in 2018 and continuing through the fifth year of the Term, the linear foot fee shall be escalated annually each July 1 based on the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, West Region for All Items ("CPI"). If, on a relevant date, the CPI does not exist in the above format, the City will substitute any official index published by the Bureau of Labor Statistics, any successor agency, or similar governmental agency, which is then in existence and which is then most nearly comparable to the CPI. If there is no increase in the CPI or substitute index, the fee shall remain what it was for the prior year.

B. WANRack warrants and represents that it has no route within Avondale that provides solely interstate telecommunication services in which no Avondale customers are served (long haul routes with out-of-state customers not subject to City transaction privilege tax for telecommunication services). If and when there are portions of WANRack's routes that provide interstate telecommunication services in which no Avondale customers are served, WANRack will immediately notify the City of the location and footage of such route(s) and pay a pro-rated linear foot fee that is due for the length of such route(s). At the next anniversary date of the Agreement, the yearly fee for such additional footage will be added to the then-current annual fee.

C. Upon each anniversary of this Agreement, any fee owed will be adjusted as provided by Subsection 20.2.3 (A) above, and payment made by as required by Section 20.3.

20.2.4 Compensation for Use of ROW. WANRack agrees to pay an annual fee for the portion of the ROW used by WANRack for Dark Fiber or Conduit leasing to Users, empty conduit occupation of the ROW, and any other uses other than those conforming to the definition of Telecommunication Services as defined in A.R.S. § 9-581. Unless a different calculation for fair and reasonable compensation is agreed to by the City, the fee will be calculated at the same linear foot rate as in Section 20.2.3 above. Upon each anniversary of this Agreement, any monetary fee will be adjusted as provided by Subsection 20.2.3 (A) above, and payment made by as required by Section 20.3. WANRack warrants and represents that at the time of the execution of this Agreement, it is not leasing Dark Fiber or Conduit to third party

Users within the ROW. In the future, should WANRack lease any of its Dark Fiber or Conduits to a third-party User, WANRack shall immediately notify the City of the location and footage of such leased Dark Fiber or Conduit route(s) and pay a pro-rated linear foot fee that is due for the length of such route(s), unless a different calculation for fair and reasonable compensation is agreed to by the City.

20.2.5 Alternative Compensation for use of ROW. In the event WANRack grants the City an indefeasible right to use six of the installed dark fibers (“Municipal Fibers”) pursuant to Section 21 below, at locations designated by the City along WANRack’s routes, for the duration of the Term, the annual fee payment set forth in Subsection 20.2.4 shall be reduced as set forth in this subsection. In consideration for WANRack allowing the City the use of the Municipal Fibers, WANRack may deduct from the total linear foot calculation in Subsection 20.2.4 those segments where the Municipal Fiber is in place.

20.3 Annual Payments. For any annual payment(s) owed, WANRack shall make such payment(s) to the City within 30 business days of the Effective Date and thereafter each year by the anniversary of such Effective Date thereof for the duration of the Term.

20.4 Permit Fees. WANRack shall pay all applicable construction permit fees to place Facilities in the ROW, which includes charges for encroachment permit applications, issuance, inspection, testing, plan review and any other fees adopted by City and applicable to persons doing work and/or encroaching in the City’s ROW pursuant to the Avondale City Code

20.5 Damage Fees. WANRack shall pay any reasonable costs associated with any damage caused to the ROW or public property. Such Damage Fees shall be due to the City not later than 30 days after the City’s written notice to WANRack of such amounts.

20.6 Pro-rated Fees. Within 30 days after the issuance of a permit for the installation of additional footage of Conduit(s), if such installation subjects WANRack to an annual fee pursuant to Section 20.2.3 above, WANRack will pay a pro-rated portion of the annual fee, as adjusted, per linear foot for that section of its expanded route. The prorated annual fee shall be determined by multiplying the annual footage fee, as adjusted, for the year of payment, by a fraction, the numerator of which is the number of full months between the month installation and the next following anniversary date of this Agreement and the denominator of which is 12. In the event WANRack cancels or returns a permit and does not construct or install Facilities that had previously been approved by such a permit, the footage fees previously paid for ROW or public property used or occupied by WANRack shall be applied as a credit toward any annual fee or refunded to WANRack by City.

20.7 Late Fees. Payment is deemed paid only when the City actually receives a good cash payment. Should any payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of 10% of the amount due, or \$100. Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and 1.5% per month from the date the amount first came due until paid. WANRack expressly agrees that the foregoing represent fair and reasonable estimates by the City and WANRack of the City’s costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delayed payment. The City shall have the right to allocate payments

received from WANRack among WANRack's obligations.

20.8 Fee Payment Amount Report. Each installment of payment by WANRack, other than permit fee payment, shall include a report showing the manner in which each component of the fee payment was calculated. The report shall summarize the transactions giving rise to the payment.

20.9 Fee Payment Amounts Cumulative. All amounts payable by WANRack hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the City or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

21. In Kind Payment as Offset to Fees Owed.

21.1 In-Lieu Payment. The Parties agree to a payment in-lieu of an in-kind value received by the City for a portion of the annual fee. As such, in consideration for WANRack to use public ROW granted in this Agreement, and in lieu of the annual fee payment to the public for use of such ROW, WANRack grants the City an indefeasible right to use six the Municipal Fibers for the Term. WANRack and the City agree the consideration in this Section 21.1 for the annual fee payment applies only to the fees that otherwise would have been due from the segments of fiber optic cables that contain fibers installed for the Agua Fria Union High School District #216; the annual fees described in Section 20 above still apply for third party leasing.

21.2 City Obligations/Rights to Municipal Fiber.

21.2.1 Lease of Fiber. The City shall not sell or lease "Dark Fiber" capacity on Municipal Fibers to third parties or resell or otherwise assign its rights and privileges contained in this Agreement to third parties.

21.2.2 Connection to Fiber. The City shall be permitted to (i) connect to the Municipal Fibers only at mutually-agreed-upon access points in the ROW, and (ii) use the Municipal Fibers only for the use and benefit of the City and all of the affiliated entities. WANRack shall connect the City facilities to the Municipal Fibers at the agreed-upon ROW access points at no cost to the City; provided, however, if the City requests, WANRack will construct and build the connection from the ROW access point into any City facility in exchange for City's payment of the sum of WANRack's actual, verified construction costs, plus an administrative charge equal to 15% of the construction costs.

21.3 WANRACK Obligations/Rights to Municipal Fiber:

21.3.1 Maintain Fibers. WANRack shall maintain and repair the Municipal Fibers so as to ensure continuing conformity of the Municipal Fibers with their respective operating specifications. WANRack shall also provide the following special maintenance on the Municipal Fibers at no cost to the City: maintenance, repair, restoration, removal, relocating, conditioning and activation of the Municipal Fibers and any other work that may be performed to

accommodate the existing or future infrastructure, so long as work does not involve maintenance of City-owned or City-controlled facilities beyond WANRack's facilities.

21.3.2 Repair Fibers. WANRack shall respond and repair within 12 hours of notification from the City any interruption of service or failure of the Municipal Fibers to operate.

21.3.3 Access Points. WANRack shall provide the City with access to the Municipal Fibers at splice points specified by the City and agreed upon by WANRack.

22. Taxes. WANRack shall pay any applicable City, county and state transaction privilege and use tax. Such taxes are in addition to any non-tax amounts owed by WANRack pursuant to Section 20. WANRack consents to the disclosure of any and all information reported on WANRack's transaction privilege tax returns by authorizing and allowing the City's tax collector to release such information to the City Manager or authorized designee.

23. Performance Bond.

23.1 Bond Requirements. Prior to receiving any permit to construct, install, maintain or perform any work on public property that requires a permit from the City pursuant to applicable City codes, WANRack shall cause to be filed and maintain until either completion of the construction or termination of this Agreement as determined by WANRack, a faithful performance bond in favor of City in the sum of \$100,000 or the amount of the construction costs (whichever is greater) to guarantee that WANRack shall observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by WANRack, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and WANRack agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the security fund and/or letter of credit.

23.2 Bond Release. If WANRack has completed the above construction and wants the bond released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

24. Security Fund.

24.1 Deposit Required. Upon application for continued use of the ROW, but no later than five business days before this Agreement is submitted to the City Council for approval, WANRack shall provide either a cash deposit or domestic irrevocable standby letter of credit to the City, in a form acceptable to the City Attorney, in the initial amount of \$50,000 as a security fund. Said cash deposit or letter of credit shall be maintained with the City for the term of this Agreement as security for the faithful performance by WANRack of all the provisions of this Agreement, and compliance with all lawful orders, permits and directions of any department or office of the City having jurisdiction over its acts or defaults under this Agreement and any

permit issued pursuant thereto, and the payments by WANRack of any fees, claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Facilities. Upon material default that remains uncured (after written notice) for greater than 30 days, the City shall have the full power of withdrawal of funds from the cash deposit put into the security fund account or letter of credit, except that all interest accrued on any cash deposit shall be payable to WANRack on demand. No withdrawals shall be made from the security fund account without the prior, written approval of the City Manager and 60 days prior, written notice of intent to withdraw to WANRack.

24.2 Withdrawal. If WANRack fails, within 10 business days of a notice of intent to draw on either the security fund account or on the letter of credit, to either dispute the notice in writing, or pay City any taxes or fees due and unpaid, or fails to repay to City, within such 10 business days of such notice, any damages, costs or expenses which City shall be compelled to pay by reason of any act or default of WANRack in connection with this Agreement, or fails, within 30 days of such notice of failure by City to dispute the notice in writing, or comply with any provision of this Agreement that the City reasonably determines can be remedied by an expenditure of funds from the cash deposit in the security fund account or letter of credit, City may immediately withdraw the amount thereof, with interest from the security fund account. Upon such withdrawal, City shall notify WANRack of the amounts and date thereof.

24.3 Restoration of Deposit Amounts. Within 20 days after notice to WANRack that any amount has been withdrawn by City from the security fund account or letter of credit, WANRack shall deposit a sum of money sufficient to restore such security fund account to the original amount or present to the City an additional irrevocable letter of credit in said amount so that the total amount of funds available to the City is \$50,000.

24.4 Erroneous Withdrawal. Any funds that City erroneously or wrongfully withdraws shall be returned to WANRack, with interest of 1.0% per month, with such interest beginning 30 business days after such a determination.

24.5. Rights Reserved. The rights reserved to City, with respect to the security fund account and/or letter of credit, are in addition to all other rights of City whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund account or letter of credit shall affect any other right City may have.

25. Insurance.

25.1 General.

25.1.1 Insurer Qualifications. Without limiting any obligations or liabilities of WANRack, WANRack shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to A.R.S. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms reasonably satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

25.1.2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect WANRack. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so, provided that such review be subject to the following restrictions: (1) the City shall execute a nondisclosure agreement in a form reasonably acceptable to WANRack prior to reviewing any policy or endorsements; and (2) any review shall be completed at a time and location reasonably selected by WANRack, which location shall be in the office of WANRack's attorney. Notwithstanding the foregoing, WANRack may redact the following information from disclosed policies and/or endorsements in that it is proprietary and is not relevant to the risk assessment to be made on behalf of the City: (1) premium amounts including surcharges, taxes and assessments; (2) references to other additional insureds or persons or entities waiving subrogation; (3) any entity specific endorsements relating to other additional insureds; (4) any information identifying a WANRack financial obligation to its insurer or its insurance broker; or (5) any information identifying financial information or obligations of any person or entity which is an insured or additional insured pursuant to the subject insurance policies or which is otherwise subject to said insurance policies. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve WANRack from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

25.1.3 Additional Insured. All insurance coverage except Workers' Compensation and Employers liability insurance and Professional Liability insurance, if applicable, and Builder's Risk insurance shall include, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

25.1.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all responsibilities or obligations required under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

25.1.5 Primary Insurance. WANRack's insurance shall be primary insurance with respect to WANRack's obligations under this Agreement and in the protection of the City as an Additional Insured.

25.1.6 Waiver. All policies, except for Professional Liability, including Workers' Compensation and Employers liability insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its representatives, officials, officers and employees for any claims arising out of the work or services of WANRack. WANRack shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

25.1.7 Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. WANRack shall be solely responsible for any such deductible or self-insured retention amount.

25.1.8 Use of Subcontractors. If any work under this Agreement is subcontracted in any way, WANRack shall execute written agreements with its subcontractors containing the indemnification provisions set forth in Section 26 and insurance requirements set forth herein protecting the City and WANRack. WANRack shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

25.1.9 Evidence of Insurance. Prior to commencing any work or services under this Agreement, WANRack will provide the City with suitable evidence of insurance in the form of certificates of insurance. The City also reserves the right to review, upon request, a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by WANRack's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect, provided that such review of any declaration page shall be subject to the following restrictions: (1) the City shall execute a nondisclosure agreement in a form reasonably acceptable to WANRack prior to reviewing any declaration page; and (2) any review shall be completed at a time and location reasonably selected by WANRack, which location shall be in the office of WANRack's attorney. Notwithstanding the foregoing, WANRack may redact information from the declaration page in that it is proprietary and is not relevant to the risk assessment to be made on behalf of the City: (1) premium amounts including surcharges, taxes and assessments; (2) references to other additional insureds or persons or entities waiving subrogation; (3) any entity specific endorsements relating to other additional insureds; (4) any information identifying a WANRack financial obligation to its insurer or its insurance broker; or (5) or any information identifying financial information or obligations of any person or entity which is an insured or additional insured pursuant to the subject insurance policies or which is otherwise subject to said insurance policies. The City shall reasonably rely upon the certificates of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the responsibilities or obligations and the City's acceptance of the WANRack's work in the ROW and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be WANRack's responsibility to forward renewal certificates to the City within 30 days of the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance shall specifically include the following provisions:

A. The City, its representatives, officers, directors, officials and employees are Additional Insureds as follows:

(i) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or substantial equivalent.

(ii) Auto Liability – Under ISO Form CA 20 48 or substantial equivalent.

(iii) Excess Liability – Follow Form to underlying insurance as applicable.

B. WANRack’s insurance shall be primary insurance as respects WANRack’s performance of the Agreement.

C. All policies, except for Professional Liability, including Workers’ Compensation and Employers liability insurance, waive rights of recovery (subrogation) against the City, its representatives, officers, officials and employees for any claims arising out of work performed by WANRack under this Agreement.

D. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

25.2 Required Insurance Coverage.

25.2.1 Commercial General Liability. WANRack shall maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 General Aggregate Limit, together with a \$10,000,000 umbrella policy. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or substantial equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its representatives, officers, officials and employees shall be included as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or substantial blanket equivalent, and if form CG 20 10 03 97 is used, it shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance. The commercial general liability policy maintained by WANRack shall contain a provision that the City, although an additional insured, shall nevertheless be entitled to recover under said policies for loss occasioned to it, its servants or employees, by reason of the negligence of WANRack.

25.2.2 Vehicle Liability. WANRack shall maintain Business Automobile Liability insurance with a combined single limit of \$5,000,000.00 each occurrence covering all of WANRack’s owned, hired and non-owned vehicles assigned to or used in the performance of

the WANRack's responsibilities or obligations under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its representatives, officers, directors, officials and employees shall be included as an Additional Insured code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof.

25.2.3 Professional Liability. If this Agreement is the subject of any professional services or work, or if the WANRack engages in any professional services or work adjunct or residual to performing the work under this Agreement, WANRack shall maintain (or, if applicable, cause its contractors or subcontractors to maintain) Professional Liability insurance covering negligent errors and omissions arising out of any professional services or obligations performed by WANRack, or anyone employed by the WANRack, with a limit of \$5,000,000.00 each claim and aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the work or services, and the WANRack shall be required to submit certificates of insurance evidencing proper coverage is in effect as required above.

25.2.4 Workers' Compensation Insurance. WANRack shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over WANRack's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000.00 for each accident, \$500,000.00 disease for each employee and \$1,000,000.00 disease policy limit.

25.2.5 Builder's Risk Insurance. WANRack shall be responsible for purchasing and maintaining insurance to protect the Facilities from perils of physical loss. The insurance shall provide for the full cost of replacement for the Facilities at the time of any loss. The insurance shall include as the named insured WANRack and shall insure against loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. WANRack shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

25.3 Cancellation and Expiration Notice. Upon receipt of notice from its insurer, the WANRack shall provide the City notice of cancellation of any insurance policy required under this Agreement.

25.4 Alternative to Required Forms. The requirements for the use of specific ISO or ACORD insurance forms and/or compliance with their specific provisions set forth in this Section 25 shall be deemed satisfied in the event WANRack (A) provides such certificates and endorsements on published ISO or ACORD forms or their substantial equivalents, and (B) maintains a net worth in excess of \$55,000,000.00 during the term of this Agreement, with evidence of such net worth provided in a form acceptable to the City Manager.

26. Indemnity.

26.1 Generally. WANRack acknowledges that it has liability for any and all of its Facilities installed in the public ROW and for its use of the ROW and for its exercise of its rights under this Agreement directly or through its Contractor(s), except to the extent of intentional acts or gross negligence on the part of the City. To the fullest extent permitted by law, WANRack, shall defend, indemnify and hold harmless the City, or its officials, boards, commissions, agents or employees, individually and collectively, for, from and against any and all Claims (as defined in Section 1) arising out of or alleged to have resulted from or materially related to the acts, errors, mistakes, omissions of WANRack, its employees, agents, or any tier of Contractors or any other person for whose acts, errors, mistakes, or omissions WANRack may be legally liable and from any Claims or amounts arising or recovered under workers compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of WANRack, its agent, employees or representatives to fulfill WANRack's obligations under this Agreement, whether resolution of the above Claim(s) proceeds to judgment or not. The provisions of this paragraph shall survive termination of this Agreement. This indemnification applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable duty.

26.2 Defense Costs. WANRack further agrees to indemnify and hold harmless the City, its officers and its employees from and against all costs, damages, and expenses incurred by the City, its officers and its employees in the defense of any litigation brought by third parties challenging the right of the City to enter into this Agreement with WANRack under City or other applicable law.

26.3 Tender of Defense. In the event that any notice of claim is served or litigation is commenced, City shall tender the defense of the litigation to WANRack, who shall immediately defend the litigation. WANRack shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to WANRack (and, where such terms directly obligate or affect City, acceptable to City). WANRack agrees to keep the Avondale City Attorney's Office informed of the status and progress of all litigation involving the City that has been tendered to WANRack or its insurance carrier.

26.3.1 Notice. The Parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City and provide copies of all relevant accident reports, incident reports, statements or other documents relevant to or which may lead to relevant materials or information, in the possession of the other party, its employees, agents, subcontractors, and/or others, promptly upon request.

26.3.2 Relevant Information. Both Parties agree to make their employees, agents, and Contractors available to the other party to gather any relevant information relating to an incident in which claims, demands, or lawsuits arise from.

26.4 Construction of Interpretation. It is the purpose of this Section 26 to provide maximum indemnification to City under the terms and conditions expressed and, in the event of a dispute, this Section 26 shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by WANRack against any and all Claims. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose only from City's sole gross negligence or intentional acts. Only

in this event may WANRack then commence an action against City for damages related to that portion judicially determined to be City's fault.

26.5 Survival. The provisions of this Section 26 shall be and remain a binding right and obligation of the City and WANRack. It is the intent of WANRack and the City upon the Effective Date of this Agreement that this Section 26 serves as any such declaration and shall be a binding obligation of and inure to the benefit of WANRack and the City and their respective successors and assigns, if any. Any failure by WANRack to indemnify the City as required under this Section 26 shall be considered a material breach of this Agreement. Notwithstanding anything to the contrary herein, WANRack shall not be obligated to indemnify the City on any provision of this Agreement that is later determined to be invalid.

26.6 Insurance No Limit. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section 26.

26.7 Reformation. As a condition to the City's executing this Agreement, WANRack specifically agrees that, to the extent any provision of this Section 26 is not fully enforceable against WANRack for any reason whatsoever, this Section 26 shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

27. Limitation of Liability.

27.1 Limited to Gross Negligence. The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to WANRack or to its affiliates or customers for any interference with or disruption in the operations of WANRack's Fiber Optic Networks or the provision of services, or for any damages arising out of or materially related to WANRack's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

27.2 No Liability for Agreement Enforcement. WANRack also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the City because of the enforcement of this Agreement.

27.3 WANRack Assumption of Risk. WANRack shall assume the risk of, and hereby relinquishes any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory authority under Arizona law to issue this license.

28. Transferability of License and Agreement.

28.1 Personal to WANRack. This license is personal to WANRack.

28.2 Transfer to Related Entity. Notwithstanding the foregoing, WANRack may transfer or assign this Agreement to any affiliate entity under common corporate control, or to the surviving entity in the event of a merger or acquisition of WANRack without City's prior consent. WANRack shall, however, give notice to the City of any such transfer or assignment.

28.3 Transfer to Unrelated Entity. Any transfer or assignment for reasons other than provided for in Section 28.2 above shall require the City's prior, written consent, which shall not be unreasonably withheld, conditioned, or delayed; WANRack agrees that it will provide sufficient documentation about the proposed transfer or assignment to enable the City to properly evaluate the proposed transfer in a timely manner.

28.4 Transfer Conditions. In making a determination as to whether to approve a transfer or assignment, the City may consider the following:

28.4.1 Required Application Information. The same information required on an original application for the license.

28.4.2 WANRack Compliance. Whether WANRack is in compliance with its license and Avondale City Code and if not, the proposed transferee's commitment to cure such noncompliance.

28.4.3 Contract Impairment. Whether the proposed transfer or assignment would result in an evasion of other applicable provisions of law or impair lawful contracts.

28.4.4 Effect on City's Interests. The effect of the transfer or assignment on the City's interests.

28.5 Acceptance by Assignee. No application for a transfer of a license shall be granted unless the proposed transferee or assignee agrees in writing that it will abide by and accept all terms of this Agreement and the Avondale City Code, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of WANRack under this Agreement for all purposes, including renewal.

28.6 Approval not Waiver. Approval of the City of a transfer or assignment of this Agreement does not constitute a waiver or release of any of the rights of the City, whether arising before or after the date of the transfer or assignment.

28.7 Transfer Remedies. When consent is required, any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this Agreement. City may, in its sole discretion and in addition to all other lawful remedies available to City under this Agreement or otherwise, and in any combination, terminate this Agreement, collect any fees owed from WANRack and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive City's consent.

28.8 Transfer Fee. WANRack shall pay to City in advance the sum of \$2,000 as a nonrefundable fee for legal, administrative and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer, whether or not City grants such request.

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

30. WANRack's Records.

30.1 Recordkeeping. During the entire term of this Agreement, WANRack shall keep records and provide information to City regarding the following:

30.1.1 Facility Status. The status of the construction, repair, location or relocation of WANRack's Facilities.

30.1.2 Fiber Optic Networks. Information relating to any Fiber Optic Networks on portions of the route that are not exempt from a fee imposed for occupation of the ROW.

30.1.3 Obligations of Agreement. Information relating to this Agreement and/or to City's or WANRack's rights or obligations under this Agreement.

30.2 Record Form. WANRack shall make available to City the requested reports or records in the formats in which they are customarily prepared by WANRack. WANRack reserves the right to object to any request made under this Section 30 as unnecessary, unreasonable or inappropriate under the circumstances and to seek appropriate confidentiality protections for any information to be produced to City.

30.3 Inspection. If necessary for the City to determine WANRack's compliance with the terms of this Agreement or other applicable law, WANRack shall provide relevant documentation as requested by the City and respond to questions in a format and time period to be decided by the Parties based on the nature of the request. Such records shall be available to City at WANRack's offices in Maricopa County, Arizona or delivered electronically as may be appropriate. WANRack shall also require its employees, agents, and accountants to give their cooperation and assistance in connection with City's access to such records.

30.3.1 Service Documentation. Such documentation can include information on the type of services WANRack is offering its customers (but not necessarily information disclosing any particular service being provided to a specific customer) and/or the financial information used in calculating any payments or taxes due to the City under this Agreement. If WANRack determines that in order to respond to City's request for documentation, it must reasonably provide Proprietary Information, WANRack shall so mark such documentation as "Confidential" and state the reason it believes the information is proprietary.

30.3.2 Proprietary Documentation. Proprietary Information disclosed by WANRack to the City or its constituent departments shall be regarded as Proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify WANRack of such request and allow WANRack a reasonable opportunity to defend its information from disclosure.

30.3.3 Public Domain Documentation. Information that is already in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain.

30.3.4 Disclosure Required by Law. Notwithstanding any provision in this Agreement, WANRack acknowledges and understands that the City is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 *et seq.*).

30.4 Reports. Upon request and subject to any necessary confidentiality requirements, WANRack shall provide to City copies of any communications and reports submitted by WANRack to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

31. Penalties for Violation of Terms.

31.1 Cumulative Remedies. City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until WANRack complies with the terms of this Agreement or the applicable law. Such remedies are cumulative and may be pursued in the alternative.

31.2 No Special Damages. Neither Party will be liable under this Agreement for lost revenues or indirect, special, incidental, consequential, exemplary, or punitive damages, even if the Party knew or should have known that such damages were possible and even if direct damages do not satisfy a remedy. This limitation will not apply to any breach of obligations related to confidentiality.

32. Liquidated Damages for Violations.

32.1 No Reduction of Indemnity or Insurance. WANRack's obligation to pay liquidated damages does not in any way detract from WANRack's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to WANRack's obligation to pay liquidated damages.

32.2 Liquidated Damages Calculated. WANRack understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of the Avondale City Code will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the Parties hereby agree to the liquidated damages specified below. The following amounts per day or part thereof may be chargeable to the security fund for the following concerns:

32.1.1 ROW Restoration. Each failure to properly restore the public ROW or to correct related violations of specifications, code ordinance or standards within 15 business days of having been notified by the City to correct such defects – \$500 per day. Such amount is in addition to any cost the City may incur to restore the ROW or correct the violation.

32.1.2 Records Availability. Each failure to make WANRack's books and records available as required by this Agreement and such failure continues for 15 business days after receipt of notice of failure to provide from the City – \$250 per day.

32.1.3 Unauthorized Transfer. Any unauthorized partial or total transfer of this Agreement –\$4,000 per transfer.

32.1.4 Material Action. Each material instance of any action or non-action by WANRack contrary to the terms of this Agreement that is not cured after 30 days' notice –\$500 per day.

32.1.5 Insurance Certificate. Failure to provide a valid Certificate of Insurance as required by Section 25.1.9 that is not cured after five days' notice –\$50 per day.

32.3 Assessment. If the City concludes that WANRack may be liable for liquidated damages, the City shall issue to WANRack a Notice of Intention to Assess Liquidated Damages and allow WANRack an opportunity to cure in the time period specified in Sections 32.2.1 through 32.2.5. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. WANRack shall pay the liquidated damage amount within 10 business days of receipt or the City shall deduct the amount from the security fund. If, however, the liquidated damages exceed \$5,000, then the following shall apply:

32.3.1 Extended Payment Period. WANRack shall have 30 days of receipt of such notice to pay the liquidated damage amount or give City notice contesting the assertion of noncompliance.

32.3.2 Contest of Assessment. In the event that WANRack contests the City's assertion of violation or fails to respond to the City's notice of intent to assess liquidated damages, City shall schedule a hearing before a neutral hearing officer to determine whether the liquidated damages were properly assessed. The City shall provide WANRack with at least 10 business days' notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, WANRack will be given the opportunity to be heard and present evidence. If the result of the hearing is that WANRack is responsible for the liquidated damage amount, then the amount determined at the hearing will be due 10 days after the hearing decision is announced. The hearing officer's determination shall be final and conclusive.

33. Revocation/Termination.

33.1 Early Termination. The license granted hereunder may be revoked and/or the Agreement terminated prior to its date of expiration by the City for the following reasons:

33.1.1 Material Failure. WANRack fails to comply with the material terms and conditions of this Agreement or applicable law, including but not limited to failing to maintain any insurance, security fund, letter of credit, and/or a performance bond.

33.1.2 Failure to Pay. WANRack fails to make payments in the amounts and at the time specified in this Agreement after a final determination that the payments were owed.

33.1.3. Cessation of Business. WANRack ceases doing business in the City.

33.1.4 Map Failures. WANRack fails to provide current, accurate as-built plans and maps showing the location of all Facilities installed or constructed in the City.

33.1.5 Bankruptcy. WANRack is or becomes insolvent or is a party to a voluntary or involuntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of WANRack as a going concern, or if there is any similar action that affects WANRack's capability to perform its obligations under this Agreement.

33.1.6 Lack of License. WANRack fails to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.

33.1.7 Court Order. A court has issued an injunction that in any way prevents or restrains WANRack's use of any portion of the ROW and remaining in force for a period of at least 30 consecutive days.

33.2 Cure Period. Before terminating the Agreement under Sections 33.1.1, 33.1.2, 33.1.4, or 33.1.6, the City Manager or a designee, shall give prior written notice to WANRack of the defect in performance and give WANRack 60 days within which to cure the defect in performance.

33.3 Cure Period Waived for Misconduct. The City need not provide a 60 day cure period prior to termination if the City finds that the defect in performance under the Agreement is due to intentional misconduct, is a violation of criminal law, or is a part of a pattern of repeated and persistent violations where WANRack has already had notice and opportunity to cure.

33.4 Manager Authority. The City Manager has the authority to terminate Agreement, subject to WANRack's right to notice and cure where provided.

33.5 Hearing Prior to Revocation of License. If requested by WANRack not later than 10 days prior to end of the applicable cure period, the City will hold a hearing prior to termination of this Agreement. Such hearing will be held in the same manner as set forth in Subsection 32.3.2 above.

33.6 Termination by Mutual Agreement. This Agreement may be terminated prior to its date of expiration by WANRack by providing the City with 90 days written notice and only upon making arrangements satisfactory with the City Manager to remove all WANRack's Facilities from public property and the ROW, unless the City Manager agrees in writing to allow WANRack to abandon part or all of its Facilities in place. If the City Engineer agrees to allow WANRack to abandon its Facilities in place, the ownership of such Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and WANRack shall cooperate to execute any documents necessary to accomplish such transfer within 30 days of such allowance of abandonment.

33.7 Equipment Removal. Notwithstanding anything in Section 33.6 above, upon termination of this Agreement, WANRack shall remove all of its optical repeaters, DWDM and CWDM multiplexers, antennae, fiber optic cables, wires, and related equipment within 90 days.

34. Non-use/Abandonment of the Facilities.

34.1 Removal on Abandonment. An “Abandoned Facility” will mean a Facility no longer in service or physically disconnected from a portion of the operating Facility or from any other Facility that is in use or still carries service. If WANRack ceases to provide services or abandons use of any of its Facilities, upon cancellation or termination of the Agreement, WANRack shall notify the City and may, subject to the City’s approval, permanently abandon the Facilities in place. In such event, the City, at its option, may acquire ownership of the Facilities. In lieu of permanent abandonment, the City may require WANRack, to the reasonable satisfaction of the City and without cost or expense to the City, to promptly remove the Facilities and to restore the public property and ROW to a reasonable condition under the supervision of the City.

34.2 City Property. Upon permanent abandonment, if the City does not require removal, WANRack shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities, which are not removed as required by the City within 90 days of either such date of termination or cancellation or of the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. WANRack will notify the Arizona Blue Stake Center to record the Facilities that have been abandoned.

34.3 Title to Property. Title to any and all personal property installed by WANRack upon the ROW that is not removed during the period set forth in Section 34.2 shall automatically vest in City.

34.4 On-going Use. Nothing in Section 34.1 shall be deemed to require WANRack to remove Facilities that the WANRack uses for the provision of services other than Telecommunications Services or Interstate Telecommunications Services, so long as such use of Facilities for the provisions of the ongoing other services is authorized by the City pursuant to this Agreement.

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

36. Gratuities. City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a gratuity was offered or made by WANRack or a

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to WANRack: WANRack, LLC
c/o Rob Oyler

15700 College Blvd., Suite 200
Lenexa, Kansas 66219
With copy to: Mark Foster
FosterLaw
904 West Avenue, Suite 107
Austin, Texas 78703

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

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

40. Partial Invalidity. If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable or preempted.

41. No Warranty.

41.1 As to License. The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.

41.2 As to ROW. WANRack acknowledges and agrees that City does not warrant the condition or safety of its row or the premises surrounding the same, and WANRack hereby assumes all risks of any damage, injury or loss of any nature whatsoever caused by or in connection with the use of any City ROW.

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

43. Remedies Not Exclusive. The remedies set forth in this Agreement are not exclusive. Election of one remedy does not preclude the use of other remedies.

44. Force Majeure. With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon WANRack, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by WANRack and is beyond its reasonable control.

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

46. Exhibits. All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement as if fully set forth herein.

47. Survival of Liability. All obligations of WANRack and City hereunder and all warranties and indemnities of WANRack hereunder shall survive termination of this Agreement.

48. Complete Agreement. This Agreement, including any Exhibits which are attached, are hereby incorporated into this Agreement and all of which constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral.

49. Modification or Amendment. This Agreement cannot be modified or amended except in writing signed by both Parties.

50. Israel. WANRack certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in A.R.S. § 35-393, of Israel.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

David W. Fitzhugh, City Manager

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2018, before me personally appeared _____, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the City of Avondale.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A
TO
WIRED TELECOMMUNICATIONS LICENSE AND
RIGHT-OF-WAY USE AGREEMENT
BETWEEN THE CITY OF AVONDALE
AND WANRACK, LLC

[Map of Use Areas]

The map contained within this exhibit is considered confidential and proprietary by WANRack. The map will be kept on file in the City's Development Services and Engineering Department and will be released publicly only pursuant to Section 30 of this Agreement.