

Staff Summary Report

Council Meeting Date: 06/05/08

Agenda Item Number: _____

SUBJECT: Request authorization for the Mayor to execute a 5-year agreement between Tower Cloud Inc., and the City of Tempe for the placement and use of facilities in the right-of-way and public places for the purpose of providing fiber optic backhaul service to wireless carriers.

DOCUMENT NAME: 20080605ITDH2 **TOWER CLOUD TELECOM (0802-34)**

SUPPORTING DOCS: No

COMMENTS: N/A

PREPARED BY: Dave Heck, Deputy IT Manager (x8777)

REVIEWED BY: Gene Obis, IT Manager (x8353)

LEGAL REVIEW: Jenae Naumann, Assistance City Attorney (x8402)

FISCAL NOTE: Tower Cloud shall pay applicable permit fees and any reasonable costs associated with construction, maintenance, and operation of its facilities in the public rights-of-way under this Agreement and Tempe City Code, Sec. 29-19.

RECOMMENDATION: Staff recommends approval, authorizing the Mayor to execute the agreement between Tower Cloud Inc. and the City of Tempe for the use of the city's rights-of-way for the purpose of providing fiber optic backhaul service to wireless carriers.

ADDITIONAL INFO: Tower Cloud Inc desires to place fiber optic cable in the right-of-way for the purpose of providing local transmission services. Tower Cloud is a provider of mobile backhaul service to wireless carriers over SONET and Ethernet networks using fiber optic communications infrastructure and licensed microwave facilities. Their infrastructure is used by cellular telephone carriers to transport the telecommunications, broadband and related services that those cellular telephone carriers supply directly to end users.

**AGREEMENT BETWEEN TOWER CLOUD INC. AND
THE CITY OF TEMPE FOR THE PLACEMENT AND USE OF FACILITIES
IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES
FOR A FIBER AND WIRELESS TRANSPORT NETWORK**

Contract No. C2008-__

This agreement for the placement and use of Network facilities in the right-of-way and public places (hereinafter "Agreement") is entered into this _____ day of June, 2008, by and between the City of Tempe, Arizona, a political subdivision of the State of Arizona (hereinafter "CITY"), and TOWER CLOUD INC. (hereinafter "TOWER CLOUD"), a Delaware corporation.

WHEREAS, TOWER CLOUD is a provider of mobile backhaul service to wireless carriers over SONET and Ethernet networks using fiber optic communications infrastructure and licensed microwave facilities that are used by cellular telephone carriers to transport the telecommunications, broadband and related services that those cellular telephone carriers supply directly to end users ("Services"); and

WHEREAS, pursuant to the Charter and Tempe City Code, and by virtue of federal and state law, by the CITY'S police powers, by its authority over its public rights-of-way, and by other city powers and authority, the CITY is authorized to enter into, renew, deny, and terminate agreements for use of the public rights-of-way for the installation, operation and maintenance of communication and information services within the CITY'S boundaries; and

WHEREAS, TOWER CLOUD has applied to CITY for permission to use certain City property, including but not limited to, City streets and easements for the placement of its fiber transport network facilities (hereinafter referred to as its "Network") under, in, along, over and across certain public property in the CITY as generally depicted in Exhibit A to this Agreement; and

WHEREAS, TOWER CLOUD has agreed to provide and maintain accurate maps showing the location of all Network facilities owned or used by TOWER CLOUD in the CITY on both public and private property within the CITY, and to comply with such other mapping requirements as CITY may establish from time to time; and

WHEREAS, TOWER CLOUD has agreed to comply with public property use requirements that CITY has established and may establish from time to time,

NOW, THEREFORE, CITY hereby grants TOWER CLOUD permission to use certain public property in the CITY under the following terms and conditions:

Definitions.

"ACC" means the Arizona Corporation Commission.

"A.R.S." means Arizona Revised Statutes, as amended from time to time.

"Cable Services" and "Cable System" shall have the same meaning as defined in Chapter 10 of the Tempe City Code.

"Commercial Mobile Radio Services" means two (2) way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 United States Code § 157.

“*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.

“*Interstate Telecommunications Services*” means a Telecommunications Corporation that places underground or above ground Facilities in the Public Highway, exclusive of Facilities used by the local networks and the portion of the interstate network that carries intrastate calls, for interstate telecommunications services.

“*Provider*” means a Telecommunications Corporation who constructs, installs, operates or maintains Telecommunications Facilities in the City Public highways.

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

“*Rights-of-way*” shall have the same meaning as Public Highway or Highway.

“*Telecommunications*” means the transmissions 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. The term does not include commercial mobile radio services, pay phone services, interstate services or Cable Services.

“*Telecommunications Corporation*” means any public service corporation to the extent that it provides Telecommunications Services in the State of Arizona.

“*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.

SECTION 1. PERMISSION GRANTED

1.1. Grant.

Subject to the provisions of this Agreement, the Tempe City Code, the Tempe City Charter, and Arizona and federal law, CITY grants to TOWER CLOUD nonexclusive and revocable rights and nonexclusive and revocable privileges as set forth in this Agreement to construct, install, operate, and maintain its Network facilities in the right-of-way and on certain public property, subject to mutually agreed upon terms and conditions. The permission granted herein shall be limited to the locations identified in Exhibit A, which is incorporated and made a part hereto by this reference.

1.1.1. At any time during the term of this Agreement, TOWER CLOUD can apply to the CITY for permits that will set forth the specific location of TOWER CLOUD'S Network, fees, if any, for that location and other terms and conditions. CITY will approve, deny or conditionally approve such applications based on the availability of space at the location sought by TOWER CLOUD, safety and other considerations in accordance with the CITY'S Code, applicable rights-of-way construction regulations and other applicable law. TOWER CLOUD agrees to schedule and attend pre-construction meetings with the CITY before any work is begun. TOWER CLOUD shall also provide and identify a representative, such as a project manager, who shall be the contact person for the CITY during the construction period.

1.1.2. Subject to obtaining the permission of the affected property owner, this Agreement also authorizes TOWER CLOUD to place its Network on property owned by third parties, such as an electric utility company or other private property owners, provided, however, the Network installed or constructed by TOWER CLOUD shall meet conditions set by applicable rights-of-way construction regulations, and if applicable, be placed underground in accordance with Chapter 25 of the Tempe City Code. Upon request, TOWER CLOUD shall promptly furnish to CITY documentation of such permission from such other affected property owner. By executing this Agreement, CITY does not waive any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the CITY for such uses of their property or facilities, or that revenues received by any public utility or other property owner from TOWER CLOUD, by virtue of TOWER CLOUD'S use of their property or facilities be included in the computation of any use agreement fees owed by such parties to the CITY.

1.1.3. No component or part of TOWER CLOUD'S Network shall be installed, constructed, located on, or attached to any property within the CITY until TOWER CLOUD has applied for and received approval for permits pursuant to Chapter 29 of the Tempe City Code. Additionally, TOWER CLOUD shall comply with all other provisions of the Tempe City Code, including but not limited to Chapter 35 regarding zoning, Chapter 25 regarding off-site construction, and other applicable city regulations.

1.1.4 The CITY may issue reasonable policy guidelines to establish procedures for determining how to control issuance of engineering permits to multiple users for the same one mile segments of their Network and/or facilities. TOWER CLOUD agrees to comply with the procedures established by the City Engineer or designee to coordinate the issuance of multiple engineering permits in the same one mile segments.

1.1.5 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 ensure compliance with the terms of this Agreement and other pertinent provisions of law.

1.1.6. Any right or privilege claimed pursuant to this Agreement by TOWER CLOUD for any use of any public street or other public property 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; C) and to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

SECTION 2. DESCRIPTION OF THE NETWORK, CONSTRUCTION, AND LOCATION

2.1 The Company anticipates that the Network System will be constructed using industry standard boring and trenching construction methods. TOWER CLOUD intends to construct infrastructure for use by wireless carriers and users of wholesale telecommunications services by providing fiber transport networks in CITY'S public right-of-way. Such infrastructure consists of all of the conduit, fiber optic cables and the associated electronics necessary to provide the Services ("System"). The layout of the System will be primarily in the form of "laterals" that consist of one 2" HDPE conduit in the CITY'S public right-of-way. 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. The System will run from currently existing fiber optic facilities, which TOWER CLOUD leases from third party service providers, to TOWER CLOUD'S customer locations. A map of the System as it is currently contemplated by TOWER CLOUD is attached as Exhibit A. TOWER CLOUD will install conduit and access points (manholes/pull boxes) using industry standard practices and in full compliance with the CITY'S ordinances and codes governing the construction of utilities in the public right-of-way.

2.1.1 If TOWER CLOUD desires to materially change the components of any of the Network, written approval of such change must be obtained from a representative of the City Engineer, which approval shall not be unreasonably withheld or delayed. Prior to commencement of installation of the Network, TOWER CLOUD shall submit specifications for proposed manholes and pull boxes to the CITY for approval, which approval shall not be unreasonably delayed or withheld. All work on the Network will be performed substantially in compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the CITY'S supplements to MAG, the City of Tempe Utility Permit Manual, and good practices for the industry.

2.2 The Network shall be installed in multiple phases as agreed upon by TOWER CLOUD and the CITY. If portions of this project will take place on the major arterial streets in the Tempe, TOWER CLOUD and CITY will work to minimize the inconvenience to the citizens of Tempe and others who use those major arterial streets impacted by the project by developing segments of the project to be completed in sequence.

2.3 Expansion or Extension of Initial and Additional Routes.

2.3.1 At any time during the term of this Agreement and upon having made proper application for construction permits as required herein and by the City Code, and having complied with the terms and conditions of this Agreement and any and all applicable engineering/construction permitting requirements, TOWER CLOUD may further expand and/or extend (construct, install, upgrade and operate) additional Network within the City without additional approval of the City Council of the City.

2.3.2 Any such further expansion and/or extension of TOWER CLOUD'S Network shall require the specific written approval and consent of the City Engineer.

2.3.3 TOWER CLOUD agrees that such further expansions and/or extensions beyond the Initial and Additional Routes shall be at all times governed by the terms and conditions of this Agreement.

2.4 TOWER CLOUD shall retain an independent tester, subject to approval by CITY in its reasonable discretion, to test all materials outlined by MAG and the CITY'S supplements to MAG that are used in construction of the Network. The testing results will be sent to CITY directly and within 3 (three) business days of obtaining results. If the material tests indicate a failure, the testing firm shall notify TOWER CLOUD and the CITY'S utility inspector within 24 hours of discovering the failure and TOWER CLOUD shall contact the CITY'S utility inspector for direction prior to continuing the work. CITY reserves the right to conduct its own tests of the materials.

2.5 TOWER CLOUD 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 including the installation, operation, maintenance, location and attachment of any and all of the Network. The proposed additional locations of TOWER CLOUD'S planned installation of any expansion of its Network shall be depicted specifically on engineering drawings provided to the CITY with the submittal of the plans and specifications during the permitting process. If TOWER CLOUD desires to change the location of any of the Network, including any related facilities or equipment, from that set forth in the initial Permit Application, TOWER CLOUD shall apply for and obtain approval for an amendment to the Permit prior to installation or construction.

2.6 Although the exact placement and location of TOWER CLOUD'S Network shall be determined by CITY through the permit process, TOWER CLOUD has expressed its intent and CITY has expressed its desire to have the Network installed outside of the paved street areas whenever such location is feasible and reasonable. Further, it is the intent and desire of both parties that when it is necessary for the Network to intersect city streets or be placed under paved areas, TOWER CLOUD shall use directional boring under such streets when feasible and reasonable. In the event that a street opening in new pavement or resurfaced pavement cannot be avoided, a surcharge fee to cover damages and early deterioration will be assessed for cutting new or resurfaced pavements less than seven years old.

2.7 Whenever TOWER CLOUD shall cause any opening or alteration whatever to be made for any purpose in any public streets, public places or property of third parties, the opening or alteration shall be completed and restored with due diligence within one week. TOWER CLOUD shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by TOWER CLOUD or its subcontractors 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.

2.8 Traffic Control.

2.8.1 All traffic shall be regulated in accordance with MAG; the City of Phoenix Barricade Manual, latest edition, with City of Tempe revisions, available through the City of Tempe Transportation Division (Transportation) at 480-350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any Special Provisions included herein.

2.8.2 At the time of the pre-construction conference, TOWER CLOUD shall designate an American Traffic Safety Services Association (ATSSA) 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 insure 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.

2.8.3 TOWER CLOUD shall have the full responsibility and liability for traffic control for this project. TOWER CLOUD shall submit a Traffic Control Plan to Transportation for approval 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. TOWER CLOUD shall not begin construction until the Traffic Control Plan is approved by the City of Tempe. An approved Traffic Control Plan shall be maintained onsite during all phases of construction, otherwise construction will cease until the Traffic Control Plan is approved.

2.8.4 During construction it may be necessary to alter traffic control as approved by Transportation. 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 ADOT Traffic Control Manual; or the City of Phoenix Barricade Manual, latest edition, with revisions as adopted by the City of Tempe. The most restrictive manual shall apply.

2.8.5 No measurement will be made for traffic control. CITY will make no payment for traffic control. The cost thereof shall be included in the price bid for the construction or installation of the facilities to which such traffic control is incidental or appurtenant. Any revisions shall be submitted to Transportation for review and approval.

2.8.6 In the event TOWER CLOUD 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 which is pre-approved by the CITY. Any damage repaired by the CITY will be billed to the TOWER CLOUD at twice the CITY'S cost.

2.8.7 TOWER CLOUD shall notify all adjacent or affected residents or businesses at least forty-eight (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.

2.8.8 Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Transportation.

2.8.9 Speed limits shall be strictly enforced.

2.8.10 For more information, please contact the City of Tempe Transportation Division at (480) 350-8219.

2.9 Clean Up.

TOWER CLOUD shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a safe, neat and clean condition. No special payment will be made for this item.

SECTION 3. SCOPE

3.1. Specific Authorization.

This Agreement authorizes TOWER CLOUD to use the public rights-of-way to build infrastructure for a Network as noted in Section 2 of this Agreement. The authority granted pursuant to this Agreement to use public property does not authorize TOWER CLOUD'S use of the Network facilities for operating a cable television network, a cable network or authorize TOWER CLOUD to operate as a cable operator, as those terms are defined in the Communications Act of 1934, as amended, state law, or the City Code. The authority granted by this Agreement does not authorize the use of public rights-of-way for an open video network as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority to install and construct its Network on City property granted herein authorizes TOWER CLOUD only to install and construct such components or Network as is necessary to construct and operate the infrastructure described in this Agreement in order to provide the Services and does not authorize TOWER CLOUD to install or construct any equipment, materials or other facilities not expressly provided for in this Agreement.

3.2. Use of TOWER CLOUD'S Facilities by Others.

This Agreement authorizes TOWER CLOUD, in its ordinary course of business (i) to lease to or contract with others for use of all or part of the Network or (ii) to sell dark fibers or conduit that are parts of the Network to others that have contracts, franchises or other agreements with the CITY to use its Public property within the CITY, without further prior consent of CITY, but only on the following conditions:

3.2.1 For the avoidance of doubt, the conditions contained in this Section 3.2 do not apply to TOWER CLOUD'S provision of the Services to its customers.

3.2.2. TOWER CLOUD shall first provide written notice to CITY of the identity of the proposed user or purchaser and the proposed use or sale arrangement.

3.2.3. In the event the lease or contract provides for the other entity to construct, install, operate or maintain any of TOWER CLOUD'S Network, no such arrangement shall proceed until the other entity enters into an Agreement with the CITY for use of the CITY'S rights of way.

3.2.4. Co-location. TOWER CLOUD'S installation of the Network shall be reasonably coordinated with other utilities and CITY to accommodate opportunities for common installation along with TOWER CLOUD'S project as set forth in this Agreement. All installations shall be in conduit or innerduct as reasonably approved by the City Engineer. Provided, however, nothing herein shall require TOWER CLOUD to incur any material additional expense to accommodate common installations.

3.3. Compliance with Laws.

TOWER CLOUD shall comply with all applicable laws as amended from time to time, including but not limited to, the Tempe City Code and the Tempe Charter and Arizona and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for TOWER CLOUD to comply with any law or regulation of the FCC or the Arizona Corporation Commission (ACC) to engage in the business activities anticipated by this Agreement, TOWER CLOUD 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.

3.4. Reports.

3.4.1. Upon request and subject to any necessary confidentiality requirements, TOWER CLOUD shall provide to CITY copies of any communications and reports submitted by TOWER CLOUD to the Federal Communications Commission (FCC) or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

3.4.2. Upon request, TOWER CLOUD shall provide CITY with regular reports, as needed, to establish TOWER CLOUD'S compliance with the various requirements and other provisions of this Agreement.

3.5. Non-Interference.

3.5.1. The Network 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 or other authorized uses over, under or through said streets and public ways. Those phases of construction relating to traffic

control, backfilling, compaction and paving, and the location or relocation of the Network shall be subject to regulation by the CITY. TOWER CLOUD shall keep accurate construction and installation records of the location of all its Network and facilities, both aboveground and underground within the CITY and furnish them to CITY within thirty (30) days of installation. TOWER CLOUD shall furnish such information in an electronic format compatible with the then current CITY electronic format (Arc GIS).

3.5.2. TOWER CLOUD shall relocate at its own expense any facilities, equipment or other encroachment installed or maintained in, on or under any public place, right-of-way or highway, as may be necessary to facilitate any public purpose or any CITY project whenever directed to do so by CITY. 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 permit. TOWER CLOUD shall comply with any requirements of Sections 31A-31, 31A-32, and 31A-24 of the Tempe City Code to the extent that such requirements are consistent with the terms of this Agreement. Within one hundred twenty (120) days after service of notice by the CITY, TOWER CLOUD shall remove the designated portions of the Network, and, if requested, restore the sidewalks and other rights-of-way to a condition comparable to the condition before the construction of the public improvement at its sole cost and expense.

3.5.3. TOWER CLOUD agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating or necessary reconstructing of any portion of its Network on public property. Notwithstanding the foregoing, CITY understands and acknowledges there may be instances when TOWER CLOUD is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the Network. TOWER CLOUD will maintain any annual permits required by the CITY for such repairs. TOWER CLOUD will notify CITY, if practicable, before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

3.6 Safety.

TOWER CLOUD'S independent contractors 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 rules and regulations are in conflict, the stricter requirement shall be followed. TOWER CLOUD'S failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve TOWER CLOUD from compliance with these provisions.

3.7. Reservation 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 ordinance or the Charter of the CITY, and TOWER CLOUD by its execution of this Agreement agrees to be bound thereby and to comply with any action or requirements of CITY in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of CITY.

SECTION 4. FEES, CHARGES, PERFORMANCE BOND, LETTER OF CREDIT, DAMAGE TO PUBLIC PROPERTY AND LIQUIDATED DAMAGES.

TOWER CLOUD shall be solely responsible for the payment of all fees and charges in connection with TOWER CLOUD'S performance under this Agreement, including those set forth below.

4.1 Administrative Fee.

TOWER CLOUD agrees to register with the CITY by completing an application form, including the information requested in Tempe City Code Sec. 31A-30(a) and the amendment requirements of Sec. 31A-30(b). TOWER CLOUD shall pay CITY for the administrative costs of processing an application for a right-of-way use agreement, a fee in the amount of Two Thousand Dollars (\$2,000) prior to submittal for approval of this Agreement to the City Council.

4.2 Compensation.

4.2.1 The parties acknowledge that applicable Arizona law (A.R.S. §§ 9-582 and 9-583) exempts intrastate telecommunications services from the fee set forth in Section 4.2.1.

4.2.2 For those services not exempt pursuant to Section 4.2.1 of this Agreement, TOWER CLOUD shall pay an annual fee equal to the annual footage fee ("Annual Footage Fee"), multiplied by the number of linear feet of Public property occupied by TOWER CLOUD'S Network pursuant to any and all permits issued by CITY. The Annual Footage Fee is One Dollar and Eighty Two Cents (\$1.82) per linear foot, which shall be adjusted annually as provided in Section 4.2.3. Within forty-five (45) days after the date of issuance of a permit for the installation of additional footage, TOWER CLOUD will pay a prorated portion of the Annual Footage Fee, as adjusted, per linear foot for that section of its expanded Network. The prorated Annual Footage 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 of issuance of the permit and the next following anniversary date of this Agreement and the denominator of which is twelve (12). In the event TOWER CLOUD cancels or returns a permit and does not construct or install the facilities, which had been approved by such a permit, the footage fees previously paid for public property not used or occupied by TOWER CLOUD shall be refunded to TOWER CLOUD by CITY.

4.2.3 Commencing on the anniversary date of this Agreement in 2009 and continuing through the fifth year of the term, the applicable Annual Footage Fee shall be escalated annually on the Agreement's anniversary date in an amount equivalent to the Consumer Price Index-All Urban Consumers, West Urban, All Items for each lineal foot of fiber optic cable now or hereafter to be installed within the public rights-of-way as described in the permit.

4.2.4 Any checks should reference this Agreement's contract number and be sent to:

City of Tempe
Attn: Telecommunications
53 S. Priest Dr., Building G
Tempe, AZ 85281

Any reminder of fee or monies owed invoices will be sent to:

TOWER CLOUD Networks

Attn: Patricia Morrison
V.P. Finance
9501 International Court N.
St. Petersburg, FL 33716
Office: 727.471.5600
Fax: 727.471.5601

pmorrison@towercloud.com

4.2.5 TOWER CLOUD shall pay applicable permit fees and any reasonable costs associated with construction, maintenance, and operation of its facilities in the public rights-of-way under this Agreement and Tempe City Code, Sec. 29-19.

4.2.6 Licensee shall pay any reasonable costs associated with any damage caused to the public rights-of-way as per this Agreement and Tempe City Code, Sec. 29-19.

4.2.7 TOWER CLOUD agrees that if it fails to pay any amounts owed to the CITY by the time prescribed for payment, TOWER CLOUD shall pay interest on the amounts owed, at the rate of one percent (1%) per month or the maximum amount allowed by law, whichever is less.

4.2.8 If and when TOWER CLOUD installs, maintains, operates, or acquires Facilities to provide services that do qualify for the annual footage fee under Section 4.2.2, TOWER CLOUD shall immediately notify the City in writing of the number of lineal feet and its location, so that the annual fee may be calculated.

4.3. Taxes.

TOWER CLOUD shall pay any applicable city, county and state transaction privilege and use tax. Such taxes are in addition to any amounts owed by either party pursuant to Sections 4.1 and 4.2. The Annual Footage Fee shall not be an offset to any transaction privilege tax that TOWER CLOUD is obligated to pay.

4.4. Permit Fees and Construction Costs.

In addition to the fees and taxes set forth herein above, TOWER CLOUD shall pay those fees and charges for encroachment permit applications, inspection, testing, plan review and any other fees adopted by CITY and applicable to persons doing work in CITY'S right of way. Additionally, if the CITY elects to retain outside inspectors or other persons to review and inspect TOWER CLOUD'S plans, specifications and construction of the Network, TOWER CLOUD shall reimburse the CITY for its actual costs incurred in connection therewith.

4.5. Security Fund/Performance Bond

4.5.1. Irrevocable Standby Letter of Credit or Cash Deposit

No later than 7 business days after execution of this Agreement, TOWER CLOUD shall provide either a cash deposit or a domestic irrevocable standby Letter of Credit to the CITY in the amount of Fifty Thousand Dollars (\$50,000) and in the form of Exhibit B or its equivalent, to guarantee that TOWER CLOUD shall fulfill and perform the terms of this Agreement, be in compliance with all orders, permits and directions of any agency of the CITY having jurisdiction over its acts or defaults under this Agreement and any permit issued pursuant thereto, and that the payments owed by TOWER CLOUD of any fees, claims, liens and taxes due the CITY which arise by reason of the construction, operation or maintenance of the facilities shall be paid. Such cash deposit or irrevocable standby letter of credit will remain in effect for the term of the Agreement. Should the CITY draw upon the cash deposit or letter of credit and by so doing decrease the amount available to the CITY, TOWER CLOUD shall, within 20 business days after notice from the CITY of the amount drawn upon, present to the CITY either additional cash or an additional irrevocable letter of credit in said amount so that the total amount of credit available to the CITY is \$50,000.

4.5.2. If TOWER CLOUD fails, within ten (10) business days of a notice of intent to draw on either the cash deposit or 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 ten (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 TOWER CLOUD in connection with this Agreement; or fails, within thirty (30) days of such notice of failure by CITY to dispute the notice in writing, or comply with any provision of this Agreement which CITY reasonably determines can be remedied by an expenditure of the funds from the cash deposit or letter of credit, CITY may immediately withdraw the amount thereof. Upon such withdrawal, CITY shall notify TOWER CLOUD of the amounts and date thereof.

4.5.3. The rights reserved to CITY, with respect to either the cash deposit or the 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 letter of credit shall affect any other right CITY may have.

4.5.4. Performance Bond.

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, TOWER CLOUD shall file and maintain until either completion of the construction or termination of this Agreement as determined by TOWER CLOUD, a faithful performance bond in favor of CITY in the sum of One Hundred Thousand Dollars (\$100,00.00) to guarantee that TOWER CLOUD shall well and truly 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 TOWER CLOUD, as principal, and shall be issued by a surety with an AM Best rating of A-/VII or better for the last four quarters.

4.5.4.1 If TOWER CLOUD 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 under Section 4.5.4 above.

4.6. Damage to Public property.

4.6.1. Damage to Public property. Whenever the installation, removal, or relocation of any of TOWER CLOUD'S Network is required or permitted under this Agreement, and such installation, removal or relocation shall cause Public property to be damaged, TOWER CLOUD, at its sole cost and expense, shall promptly repair and return Public property in which the Network components are located to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If TOWER CLOUD does not repair the site as just described, then CITY shall have the option, upon ten (10) business days prior written notice to TOWER CLOUD, to perform or cause to be performed such reasonable and necessary work on behalf of TOWER CLOUD and to charge TOWER CLOUD for the proposed costs to be incurred or the actual costs incurred by the CITY at CITY'S standard rates, plus an administrative fee of fifteen percent (15%). Notwithstanding the notice provision above, in the event of a public emergency as that term is defined in clause 4.6.2 below, the CITY shall have the right to immediately perform, without prior written notice to TOWER CLOUD, such reasonable and necessary work on behalf of TOWER CLOUD to repair and return public property in which the Network or other facilities are located to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The CITY shall provide written notice to TOWER CLOUD of the repairs as soon as

practicable after the work has begun. Upon the receipt of a demand for payment by CITY, TOWER CLOUD shall, within thirty (30) days, reimburse CITY for such costs. For any pavement cuts by TOWER CLOUD, TOWER CLOUD 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 29 of the Tempe City Code and the fees established by the CITY pursuant thereto. TOWER CLOUD agrees to pay within thirty (30) days from the date of issuance of an invoice from CITY.

4.6.2. Public Emergency. CITY shall have the right, because of a public emergency, to sever, disrupt, dig-up or otherwise destroy facilities of TOWER CLOUD without any prior notice to TOWER CLOUD, if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, Transportation Division Deputy Public Works Manager, Public Works Manager, City Engineer or Water Utilities Manager. A public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the CITY 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. TOWER CLOUD shall be responsible for repair at its sole expense of any of its Network facilities damaged pursuant to any such action taken by CITY.

4.6.3. Blue Stake. TOWER CLOUD 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 TOWER CLOUD'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.

4.7. Liquidated Damages.

4.7.1 TOWER CLOUD understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of Chapter 29 of the Tempe 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 TOWER CLOUD for the following concerns:

(a) Each failure to properly restore the public right-of-way or to correct related violations of specifications, code ordinance or standards within seven working days of having been notified by the CITY to correct such defects -- \$200.00 per day;

(b) Each failure (not covered by subsection (a)) to comply with the provisions of this Agreement or applicable CITY Code provision or law -- \$100 per day.

4.7.2. If the City Manager concludes that TOWER CLOUD may be liable for liquidated damages, the City Manager shall issue to TOWER CLOUD by certified mail a Notice of Intention to Assess Liquidated Damages. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. TOWER CLOUD shall within 30 days of receipt of such notice:

(a) Respond to the CITY in writing, contesting the CITY'S assertion of violation and providing such information or documentation as may be necessary to support TOWER CLOUD'S position; or

(b) Cure any such violation (and provide written evidence of the same), or, in the event that, by the nature of the violation, such violation cannot be cured within such 30-day

period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. TOWER CLOUD shall report to the CITY, in writing, at 30-day intervals as to TOWER CLOUD'S efforts, indicating the steps taken by TOWER CLOUD to cure said violation and reporting TOWER CLOUD'S progress until such violation is cured. In the event that TOWER CLOUD contests the CITY'S assertion of violation or fails to respond to the CITY'S notice of intent to assess liquidated damages, within fifteen (15) days the CITY shall schedule a hearing in accordance with the procedures set forth in Section 29-18 the City Code.

4.8 Other Municipal Agreements.

If TOWER CLOUD enters into any agreement for use of public property with another contiguous municipality to CITY in Maricopa County that grants to the other municipality rights or financial benefits than what is provided by this Agreement, the CITY shall have the right to agree to and amend this Agreement to reflect the same or substantially similar terms of such other agreement.

SECTION 5. TERM OF AGREEMENT

5.1 The term of this Agreement and duration of the rights, privileges and authorizations granted hereunder shall be for five (5) years from the effective date of the Agreement. This Agreement may be renewed for successive five (5) year terms upon mutual agreement of the parties, subject to the provisions of Section 7.7.6.

5.2 If all or part of TOWER CLOUD'S Network remains in the right-of-way and TOWER CLOUD continues to use such Network or part thereof beyond the expiration of the Agreement's term, the Agreement shall be considered to be in a "holdover term," subject to the terms and conditions of this existing Agreement. Such holdover term, however, shall not exceed 90 days beyond the expiration of the term, and no permits shall be issued to TOWER CLOUD by the CITY until a new or renewal agreement extending the term has been executed by the parties, unless TOWER CLOUD has demonstrated due diligence in obtaining a new or renewed agreement.

5.3 Failure by TOWER CLOUD to have a new or renewed agreement for an additional term by the expiration of the holdover term shall result in immediate withdrawal and revocation of any existing permits issued by the CITY to TOWER CLOUD.

SECTION 6. EFFECTIVE DATE AND VALIDITY OF AGREEMENT

This Agreement is effective upon execution and signature by both parties. TOWER CLOUD shall acknowledge that as a condition of acceptance of this Agreement, TOWER CLOUD was required to be represented throughout the negotiations of the Agreement by its own attorneys and TOWER CLOUD had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. TOWER CLOUD 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, TOWER CLOUD acknowledges and accepts the right and authority of CITY to execute this Agreement and to enforce the terms herein. TOWER CLOUD agrees it shall not now or at any time hereafter directly contest or challenge CITY'S authority under currently applicable federal, state and local law to enter into and enforce this Agreement in any city, state or federal court or regulatory or administrative agency.

SECTION 7. INSURANCE AND INDEMNITY

7.1. General Requirements. TOWER CLOUD, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized to do business in the State of Arizona.

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

7.1.2. If any of the insurance policies are not renewed prior to expiration, payments, if owed, to TOWER CLOUD may be withheld until these requirements have been met, or at the option of the CITY, the CITY may pay the Renewal Premium and withhold such payments from any monies due the TOWER CLOUD.

7.1.3. All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City of Tempe, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

7.1.4. TOWER CLOUD'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this Agreement, it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

7.1.5. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of TOWER CLOUD'S acts, errors, mistakes, omissions, work or service.

7.1.6. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of TOWER CLOUD shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require TOWER CLOUD to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions of up to \$1,000,000 (One Million Dollars) shall be accepted.

7.1.7. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.

7.1.8. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the TOWER CLOUD with reasonable promptness in accordance with the TOWER CLOUD'S information and belief.

7.1.9. In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under this Agreement, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due TOWER CLOUD until such time as the TOWER CLOUD shall furnish such additional security covering such claims as may be determined by the CITY.

7.1.10 TOWER CLOUD shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein for TOWER CLOUD.

7.2. Proof of Insurance-Certificates of Insurance.

7.2.1. Prior to or upon execution of this Agreement, TOWER CLOUD shall furnish to CITY Certificates of Insurance issued by TOWER CLOUD'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the CITY'S Risk Management Division approval of such Certificates. Such certificate(s) shall include the endorsement listing the CITY as an Additional Insured pursuant to Section 7.1.3 and shall be attached as Exhibit C to this Agreement.

7.2.2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Tempe five (5) business days prior to the expiration date.

7.2.3. All Certificates of Insurance shall identify the policies in effect on behalf of TOWER CLOUD, their policy period(s), and limits of liability. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the Agreement documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance TOWER CLOUD. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this Agreement shall be sent to:

City of Tempe
Attn: Risk Manager
P.O. Box 5002.
Tempe, AZ 85280

with copy to:
City of Tempe
ITD - Telecommunications
120 E. 5th St.
Tempe, AZ 85281

7.2.4. CITY reserves the right to request and to receive, within 10 business days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise TOWER CLOUD of any deficiencies in such policies and endorsements, and such receipt shall not relieve TOWER CLOUD from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of TOWER CLOUD'S obligations under this Agreement.

7.3 Required Coverage.

7.3.1. Such insurance shall protect TOWER CLOUD from claims set forth below that may arise out of or result from the operations of TOWER CLOUD under this Agreement and for which TOWER CLOUD may be legally liable, whether such operations be by the TOWER CLOUD or by a consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

7.3.2. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the TOWER CLOUD'S employees;

7.3.3. Claims for damages insured by usual personal injury liability coverage;

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

7.3.5. Claims involving contractual liability insurance applicable to the TOWER CLOUD'S obligations under the Indemnification Agreement.

7.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$5,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000 per occurrence and an aggregate of \$10,000,000 in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for TOWER CLOUD'S operations and products, and completed operations.

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

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

7.6. Automobile Liability.

If TOWER CLOUD owns and/or operates vehicles in Arizona, TOWER CLOUD shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$5 million each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the TOWER CLOUD'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5 million per accident for bodily injury and property damage.

7.7. Indemnity.

7.7.1 To the fullest extent permitted by law, TOWER CLOUD shall defend, indemnify and hold harmless the CITY, its agents, representatives, officers, directors, officials and employees, individually and collectively, from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Agreement and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, materially related to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, work or Services of TOWER CLOUD, its employees, agents, or any tier of subcontractors in the performance of this Agreement or of any other person for whose acts, errors, mistakes or omissions TOWER CLOUD 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 TOWER CLOUD, its agents, employees or representatives to fulfill TOWER CLOUD'S obligations under this Agreement. This indemnity shall not be construed to include

losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CITY. The provisions of this paragraph shall survive termination of this Agreement.

7.7.2 TOWER CLOUD further agrees to indemnify CITY, its officers and employees from and against all costs, damages, and expenses incurred by CITY, its officers and employees in the defense of any litigation brought by third parties challenging the right of CITY to enter into this Agreement to TOWER CLOUD under city or other applicable law. In the event that such litigation is commenced, CITY may, but is not required to, tender the defense of the litigation to TOWER CLOUD, which shall then notify the CITY of TOWER CLOUD'S acceptance of the tender and shall then defend the litigation. If the CITY tenders the defense to TOWER CLOUD, TOWER CLOUD shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to TOWER CLOUD (and, where such terms directly obligate or affect CITY, acceptable to CITY). TOWER CLOUD agrees to keep the Tempe City Attorney's Office informed of the status and progress of all litigation that has been tendered to TOWER CLOUD or its insurance carrier.

7.7.3 It is the purpose of this subsection to provide maximum indemnification to CITY under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the CITY by TOWER CLOUD.

7.7.4 The provisions of this subsection shall not be dependent or conditioned upon the validity of this Agreement and shall be and remain a binding right and obligation of the CITY and TOWER CLOUD even if part of all of this Agreement is declared null and void in a legal or administrative proceeding. It is the intent of TOWER CLOUD and CITY upon the effective date of this Agreement that the provisions of this subsection serve as any such declaration and shall be a binding obligation of and inure to the benefit of TOWER CLOUD and CITY and their respective successors and assigns, if any.

7.7.5. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this subsection.

7.7.6 City reserves the right to periodically review said insurance limits to ensure coverage based on market and risk requirements throughout the effective term of this Agreement.

SECTION 8. TRANSFERABILITY

8.1. City Consent Required.

Except as otherwise permitted in subsection 3.2 of this Agreement, the rights and privileges granted pursuant to this Agreement shall not be leased, assigned, sublet, sold or otherwise transferred either in whole or in part, nor shall title thereof, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except TOWER CLOUD, either by act of TOWER CLOUD or operation of law, without the express written consent of CITY by resolution passed by the City Council, which consent shall not be unreasonably withheld or delayed. The new Agreement, as approved by CITY, shall be equally subject to all the obligations and duties of TOWER CLOUD in the original Agreement, including any amendments, which will remain in full effect, as if the new Agreement was the original Agreement. Prior to any proposed assignment becoming final, TOWER CLOUD shall seek the consent of CITY to such proposed assignment. Notwithstanding the foregoing, prior consent shall not be required for a transfer of control of TOWER CLOUD to any company which is owned or controlled or under common control and with the same direct parent as TOWER CLOUD, and which is intended after such transfer to remain under the ownership or control of that parent or an entity under common control or with the same direct parent.

8.1.1 Nothing in this Section shall be deemed to prohibit a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of TOWER CLOUD'S assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of TOWER CLOUD through a default of TOWER CLOUD in loan obligations, the Lender may assume the rights and obligations of the TOWER CLOUD. The Lender may not transfer or change control of the Agreement without submitting the change to the CITY for approval. If the Lender does continue operation on any basis at any time, the Lender shall be subject to all provisions of the Agreement. No later than 30 days after assumption of control by the Lender, the Lender shall apply to the CITY for the right to continue assumption of control or to transfer the Agreement. Application by the Lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and shall not be unreasonably denied or upheld. A "Lender" as discussed herein shall not include a company, person or corporation or other entities that operate cable television systems or fiber optics telecommunications systems as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the Agreement without City Council review and approval.

8.1.2. The approval of any change shall include an Assignment Agreement form to be signed by Assignee, Assignor and CITY. TOWER CLOUD shall provide CITY a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by TOWER CLOUD. TOWER CLOUD shall notify CITY within sixty (60) days of any change in mailing address.

8.1.3. The assignment of this Agreement, including any amendments, shall be binding on the Assignee as upon the Assignor of the Agreement as if Assignee had originally executed the Agreement for the full term of the Agreement, and shall include the following:

8.1.3.1. The proposed transferee has read, accepts, and agrees to be bound by the terms of this Agreement; and

8.1.3.2. The proposed transferee assumes all obligations, liabilities and responsibility under the Agreement for the acts and omissions of TOWER CLOUD, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position or exercise any right which TOWER CLOUD could not have exercised; and

8.1.3.3. TOWER CLOUD and the proposed transferee shall submit to CITY a description of the nature of the transfer.

SECTION 9. NON-EXCLUSIVE RIGHTS

9.1. Non-Exclusive Rights.

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 to deny to or lessen the powers and privileges granted CITY under the Constitution and laws of the State of Arizona.

9.2. Priority Rights.

Any and all rights granted to TOWER CLOUD under this Agreement shall be exercised at TOWER CLOUD'S sole cost and expense and shall be subject to the prior and continuing right of CITY to use all public property exclusively or concurrently, with any other person or persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of 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 TOWER CLOUD, including any fee or leasehold interest, easement, or any franchise rights.

SECTION 10. TERMINATION

10.1 This Agreement may be terminated prior to its date of expiration by the CITY for the following reasons:

10.1.1. TOWER CLOUD fails to comply with the material terms and conditions of the Agreement or applicable law.

10.1.2. TOWER CLOUD fails to make payments in the amounts and at the time specified in this Agreement.

10.1.3 TOWER CLOUD ceases doing business in the CITY.

10.1.4 TOWER CLOUD fails to provide current, accurate as built plans and maps showing the location of all Network facilities installed or constructed in the CITY.

10.1.5 TOWER CLOUD files for bankruptcy.

10.2 Before terminating the Agreement under Sections 10.1.1, 10.1.2. or 10.1.4, the City Manager or a designee, shall give prior written notice to TOWER CLOUD of the defect in performance and give TOWER CLOUD sixty (60) days within which to cure the defect in performance.

10.3 The CITY need not provide a sixty (60) day cure period prior to termination if the CITY finds that the defect in performance is due to an intentional misconduct, is a violation of criminal law, or is a part of a pattern of repeated and persistent violations where TOWER CLOUD has already had notice and opportunity to cure.

10.4 The City Manager has the authority to terminate, subject to TOWER CLOUD'S right to notice and cure provided in Section 10.3, this Agreement for the causes stated in Sections 10.1 above.

10.5. Termination by Mutual Agreement.

This Agreement may be canceled prior to its date of expiration by TOWER CLOUD by providing the CITY with ninety (90) days written notice and only upon making arrangements satisfactory with the City Engineer to remove all TOWER CLOUD'S Network facilities and equipment from public property and right-of-way, unless the City Engineer agrees in writing to allow TOWER CLOUD to abandon part or all of its facilities in place. If the City Engineer agrees to allow TOWER CLOUD to abandon its facilities in place, the ownership of such Network including everything permitted by CITY to be abandoned in place shall transfer to CITY and TOWER CLOUD shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.

10.6 Abandonment of the Network Facilities.

10.6.1 If TOWER CLOUD abandons use of its Network upon cancellation or termination of the privilege herein granted, TOWER CLOUD shall notify the CITY and may, subject to the CITY'S approval, permanently abandon the Network in place. In lieu of permanent abandonment, the CITY may require TOWER CLOUD to the reasonable satisfaction of the CITY and, without cost or expense to the

CITY, promptly to remove Network and to restore the public property and right-of-way to a reasonable condition under the supervision of the CITY.

10.6.2 Upon permanent abandonment, if the CITY does not require removal, TOWER CLOUD 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 one hundred twenty (120) 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. The Arizona Blue Stake Center must be notified to record the Network as abandoned.

10.7. Cancellation for Conflict of Interest.

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

10.8 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 TOWER CLOUD or a representative of TOWER CLOUD to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by TOWER CLOUD.

SECTION 11. PROPRIETARY INFORMATION

Proprietary information disclosed by TOWER CLOUD for the purposes hereunder shall mean any document or material clearly identified by TOWER CLOUD, as confidential (hereinafter "Proprietary Information"). Such Proprietary Information shall include, but not be limited to, any customer lists, financial information, technical information, or other information clearly identified as confidential by TOWER CLOUD, and pertaining to Services provided to its customers.

11.1. Notice to TOWER CLOUD.

Proprietary Information disclosed by TOWER CLOUD hereunder to CITY or its constituent departments shall be regarded as proprietary as to third parties. If CITY receives a request to disclose such information, CITY shall notify TOWER CLOUD of such request and allow TOWER CLOUD a reasonable opportunity to defend its information from disclosure. The foregoing shall not apply to any information which is already in the public domain; however, if public domain information is included with Proprietary Information on the same document, CITY shall only disclose those portions within the public domain without providing TOWER CLOUD notice as provided hereinabove.

11.2. Public Records Law.

Notwithstanding any provision in this Agreement, TOWER CLOUD acknowledges and understands that CITY is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Laws (A.R.S. § 39-121 et. seq.).

SECTION 12. NOTICE/CONTRACT MONITOR

12.1. Written.

All notices, which shall or may be given pursuant to this Agreement, shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, or by facsimile or email transmission if a hard copy of the same is followed by delivery through the U.S. mail or by private delivery systems, addressed as follows:

CITY OF TEMPE:

City of Tempe
ITD – Telecommunications Policy Administrator
120 E. 5th St.
Tempe, AZ 85281
Phone: (480) 350-8364
Fax: (480) 350-8366

With a copy to:

Tempe City Attorney's Office
Attn: City Attorney
P.O. Box 5002
21 E. 6th St., Suite # 201
Tempe, AZ 85280
Phone: (480) 350-8227
Fax: (480) 350-8645

TOWER CLOUD:

Tower Cloud Inc.
Attn: Melissa Buda
V.P. Legal & Regulatory
9501 International Court N.
St. Petersburg, FL 33716
Office: 727.471.5600
Fax: 727.471.5601
mbuda@towercloud.com

With a copy to:

James Moskowitz
Fleischman and Harding LLP
1255 23rd St., N.W. Eighth Floor
Washington, D.C. 20037
Phone: (202) 939-7965
Fax: (202) 745-0916

Notices shall be deemed sufficiently given and served upon the other party if delivered personally or by facsimile or email transmission (provided with respect to facsimile or email that such transmissions are received on a business day during normal business hours), the first business day after deposit if sent by private delivery systems and the third business day after deposit in U.S. Mail.

Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

12.2. On-Call Assistance.

TOWER CLOUD shall be available to staff employees of any City department having jurisdiction over TOWER CLOUD'S activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Network. CITY may contact by telephone the control center operator at the following phone number 1-888-TWR-CLOU regarding such problems or complaints.

12.3 Contract Monitor

The CITY'S contract monitor for this Agreement is the Telecommunications Policy Administrator .

SECTION 13. 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.

SECTION 14. FAILURE OF CITY TO ENFORCE AGREEMENT NO WAIVER

TOWER CLOUD shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of CITY upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 15. 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 TOWER CLOUD, 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 TOWER CLOUD and is beyond its reasonable control.

SECTION 16. PARTIAL INVALIDITY.

If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid, 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 or unconstitutional.

SECTION 17. CONDEMNATION BY CITY

The CITY hereby reserves the right to acquire TOWER CLOUD'S portion of the Network subject to this Agreement by negotiation, purchase or through the exercise of the right of eminent domain in accordance with the applicable conditions set forth in the Arizona Revised Statutes. However, under no circumstances shall any valuation be made for any right or privilege granted by this Agreement should the City acquire the property of TOWER CLOUD.

SECTION 18. 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 (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

This Agreement executed this ____ day of June 2008.

CITY OF TEMPE,
A municipal corporation

TOWER CLOUD, INC.
A Delaware corporation

Mayor Hugh Hallman

By: _____
Title: _____

Attest:

Attest:

City Clerk

Title: _____

APPROVED AS TO FORM:

Andrew Ching, City Attorney

EXHIBIT "A" – Tower Cloud's Initial Routes

EXHIBIT "B" –Form for Letter of Credit

EXHIBIT "C" - Certificate of Insurance

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/22/08

PRODUCER
Wachovia Insurance Serv
4600 W Cypress
Tampa FL 33607
813-287-1936

INSURED
Tower Cloud, Inc.
9501 International Court
Saint Petersburg, FL 33716

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Continental Casualty Company	20443
INSURER B:	Continental Insurance Company	35289
INSURER C:	CNA Insurance Companies	
INSURER D:		
INSURER E:		

COVERAGES

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

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	C2091789864	08/31/07	08/31/08	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
						MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COMP/OP AGG	\$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	C2091789816	08/31/07	08/31/08	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	C2091789038	08/31/07	08/31/08	EACH OCCURRENCE	\$6,000,000
						AGGREGATE	\$6,000,000
							\$
							\$
							\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC292561197	01/01/08	01/01/09	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
C		OTHER D&O	287086749	12/01/07	12/01/08		2,000,000
C		E&O	287065349	08/31/07	08/31/08		5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of Tempe is additional insured under above general liability policy as required by written contract.

CERTIFICATE HOLDER

City of Tempe, Arizona, Attn:
Risk Manager
PO Box 5002
Tempe, AZ 85280

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Michael A. Suong

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

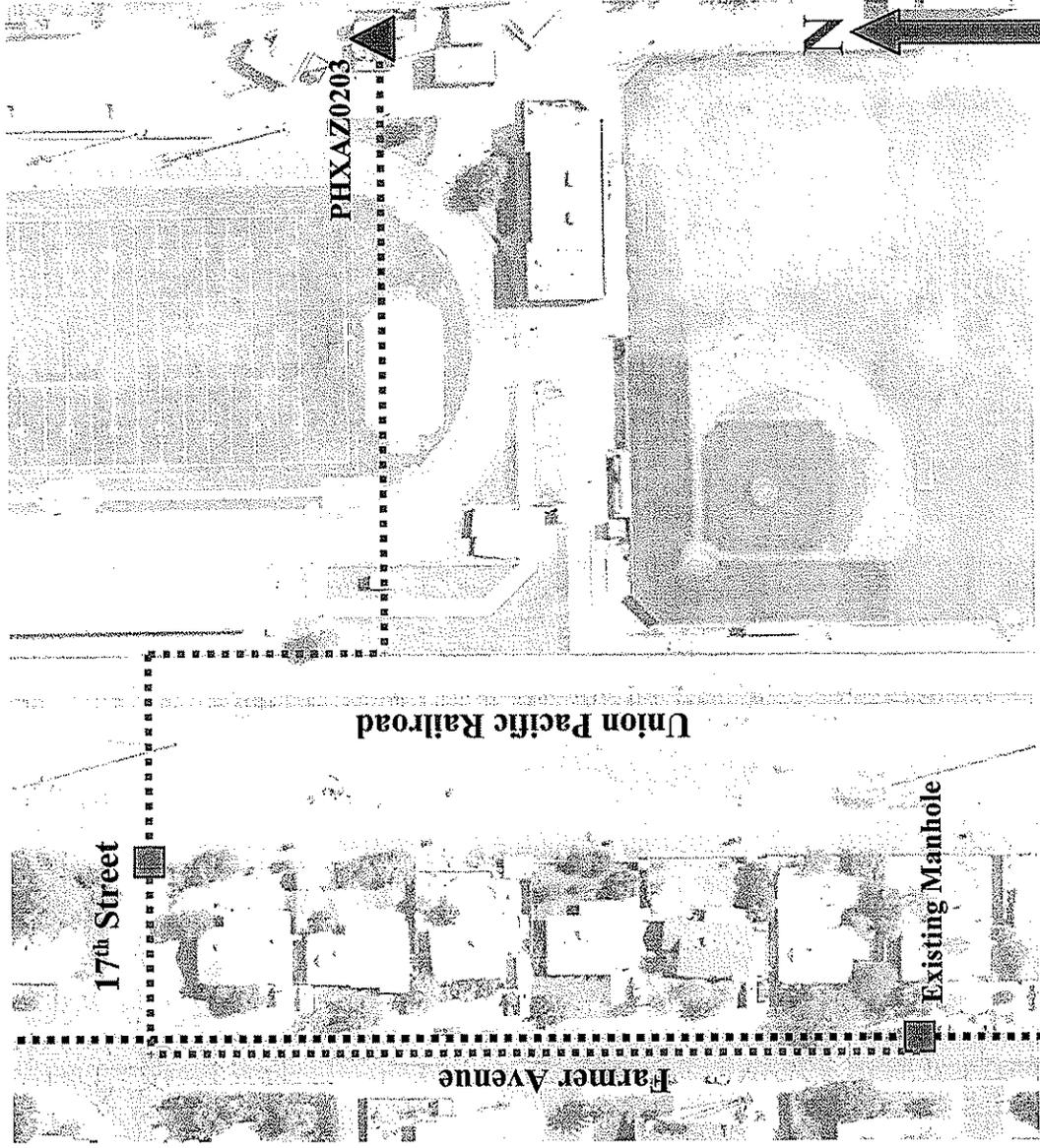
If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT A - TOWER CLOUD

PHXAZ0203 – 1730 South Mill Avenue, Tempe



Construction Notes:

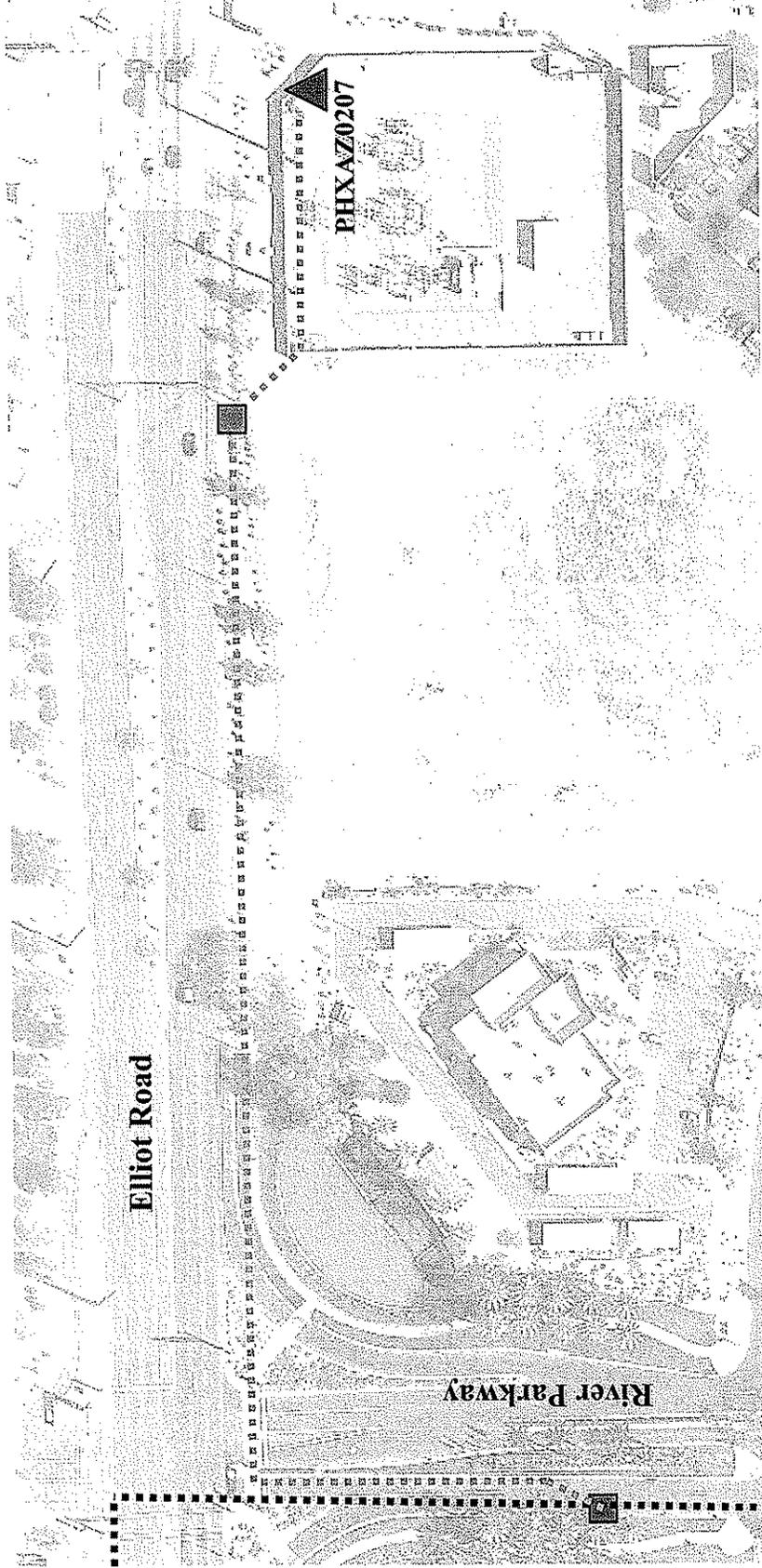
- 1.) Place conduit from AGL access point to proposed ZMH then into Sprint Site.
- 2.) Pull fiber from AGL access point to ZMH then into Sprint site.
- 3.) Splice fiber at ZMH.

Legend

- Existing AGL Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed AGL Access Point
- ▲ Sprint Cell Site

EXHIBIT A - TOWER CLOUD

PHXAZ0207 - 2185 East Elliot Road, Tempe



Legend

- Existing AGL Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed AGL Access Point
- ▲ Sprint Cell Site

Construction Notes:

- 1.) Place conduit from AGL access point to proposed ZMH then into Sprint Site.
- 2.) Pull fiber from AGL access point to ZMH then into Sprint Site.
- 3.) Splice fiber at ZMH.

PHXAZ0293 – 1501 West Baseline Road, Tempe

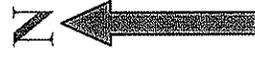
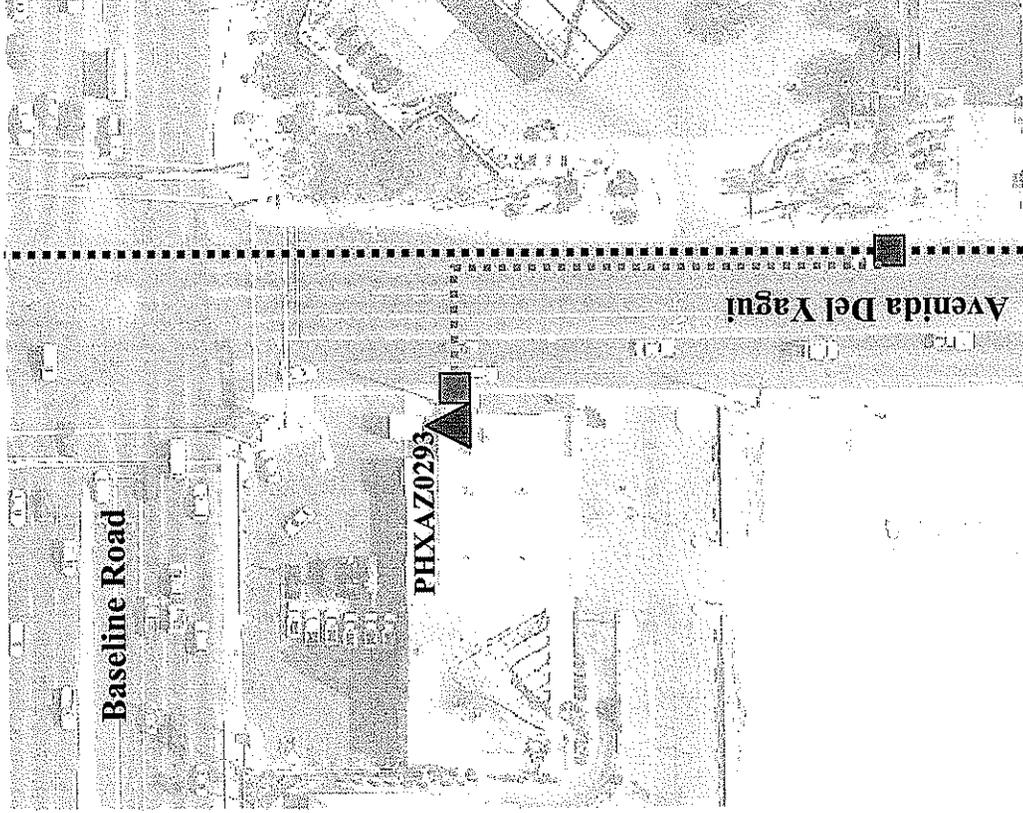
EXHIBIT A - TOWER CLOUD

Construction Notes:

- 1.) Place conduit from AGL access point to proposed ZMH then into Sprint Site.
- 2.) Pull fiber from AGL access point to ZMH then into Sprint Site.
- 3.) Splice fiber at ZMH.

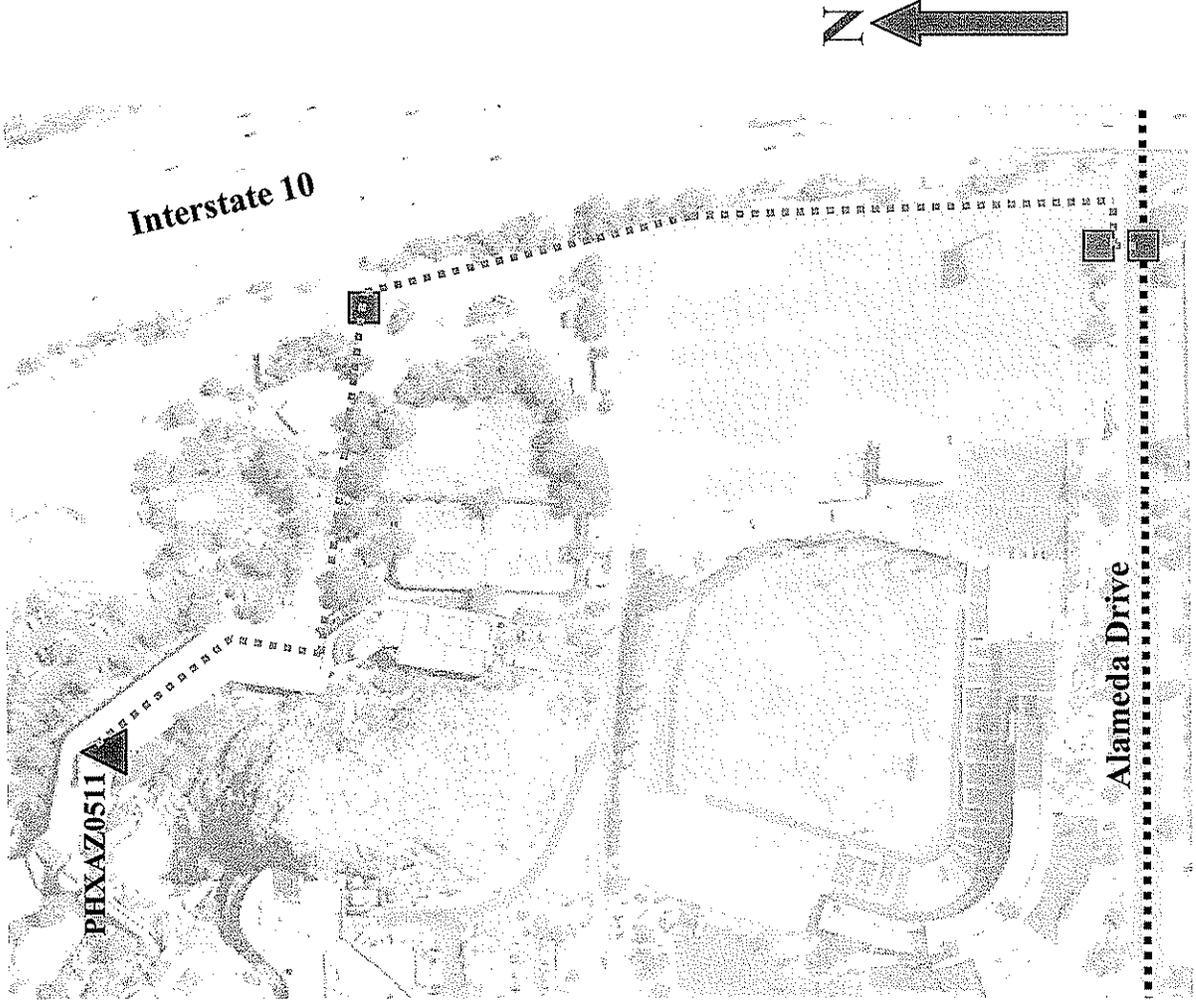
Legend

- Existing AGL Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed AGL Access Point
- ▲ Sprint Cell Site



PHXAZ0511 – 2000 West Westcourt Way, Tempe

EXHIBIT A - TOWER CLOUD



Construction Notes:

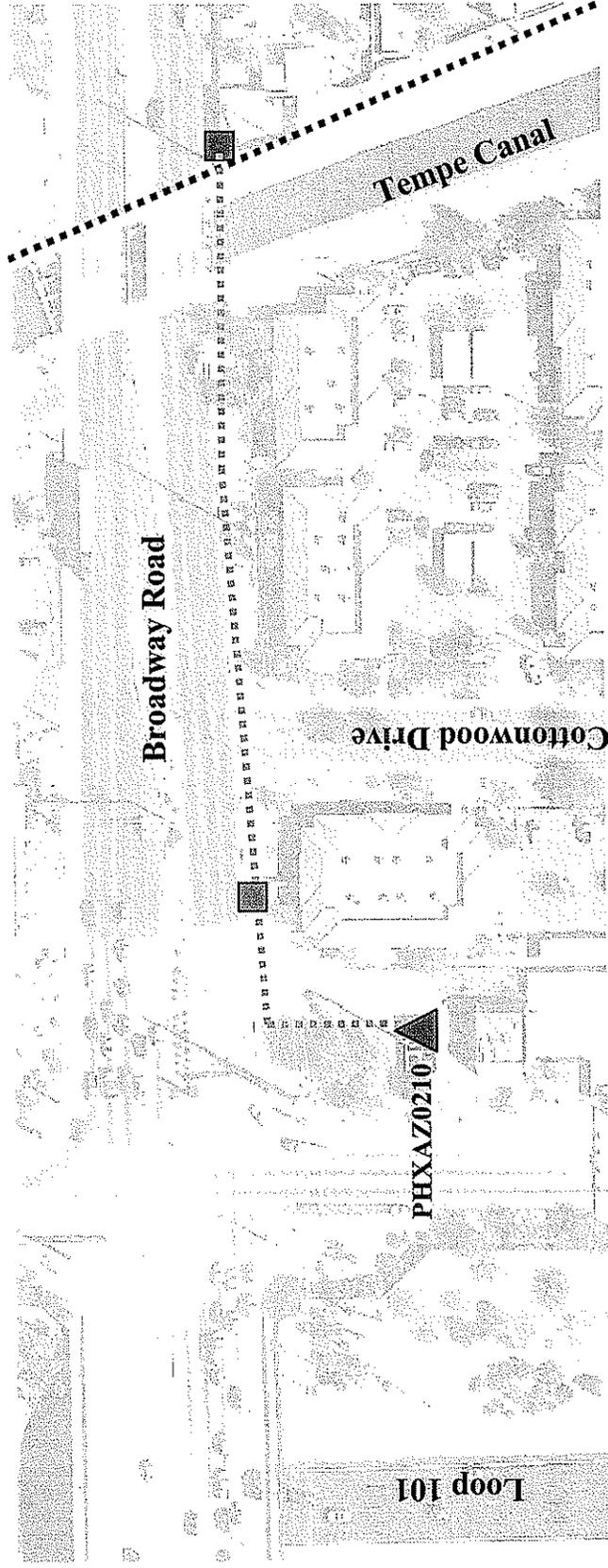
- 1.) Place conduit from AGL access point to proposed ZMH then into Sprint Site.
- 2.) Pull fiber from AGL access point to ZMH then into Sprint Site.

Legend

- Existing AGL Backbone
- Proposed 2" Conduit
- ▣ Proposed Pullbox/Manhole
- ▣ Proposed AGL Access Point
- ▲ Sprint Cell Site

PHXAZ0210 – 2055 South Price Road, Tempe

EXHIBIT A- TOWER CLOUD

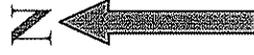


Legend

- Existing SRP Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed SRP Access Point
- ▲ Sprint Cell Site

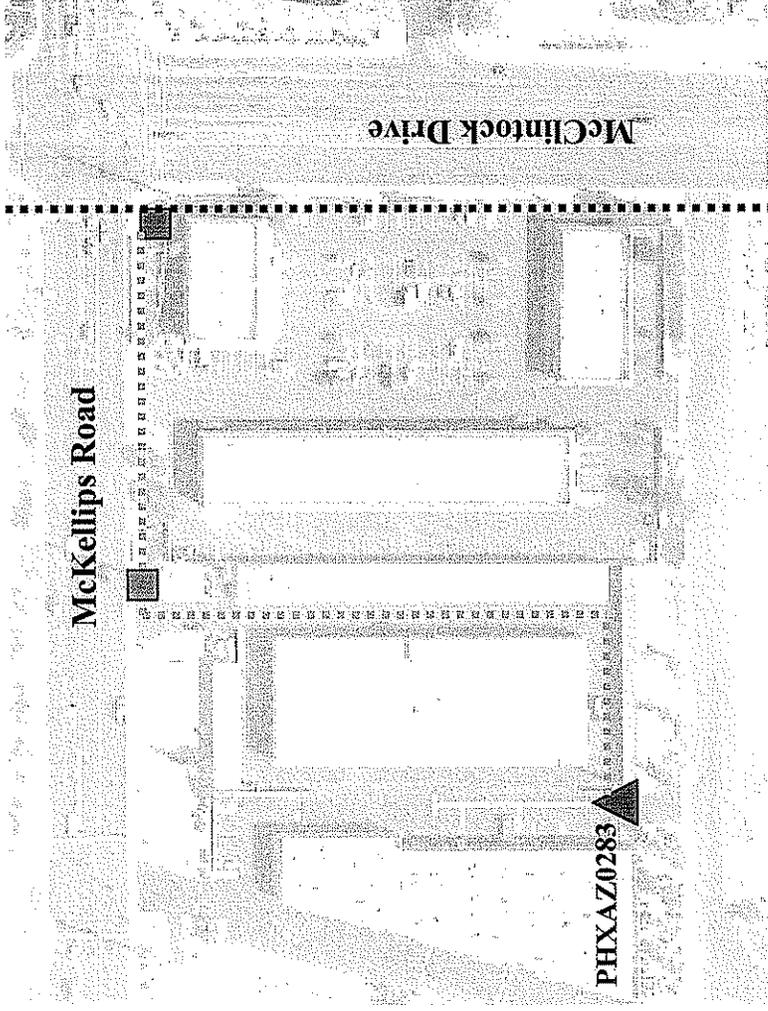
Construction Notes:

- 1.) Place conduit from SRP access point to proposed ZMH then into Sprint Site.
- 2.) Pull fiber from SRP access point to ZMH then into Sprint Site.
- 3.) Splice fiber at ZMH.



PHXAZ0283 – 1737 East McKellips Road, Tempe

EXHIBIT A - TOWER CLOUD



Construction Notes:

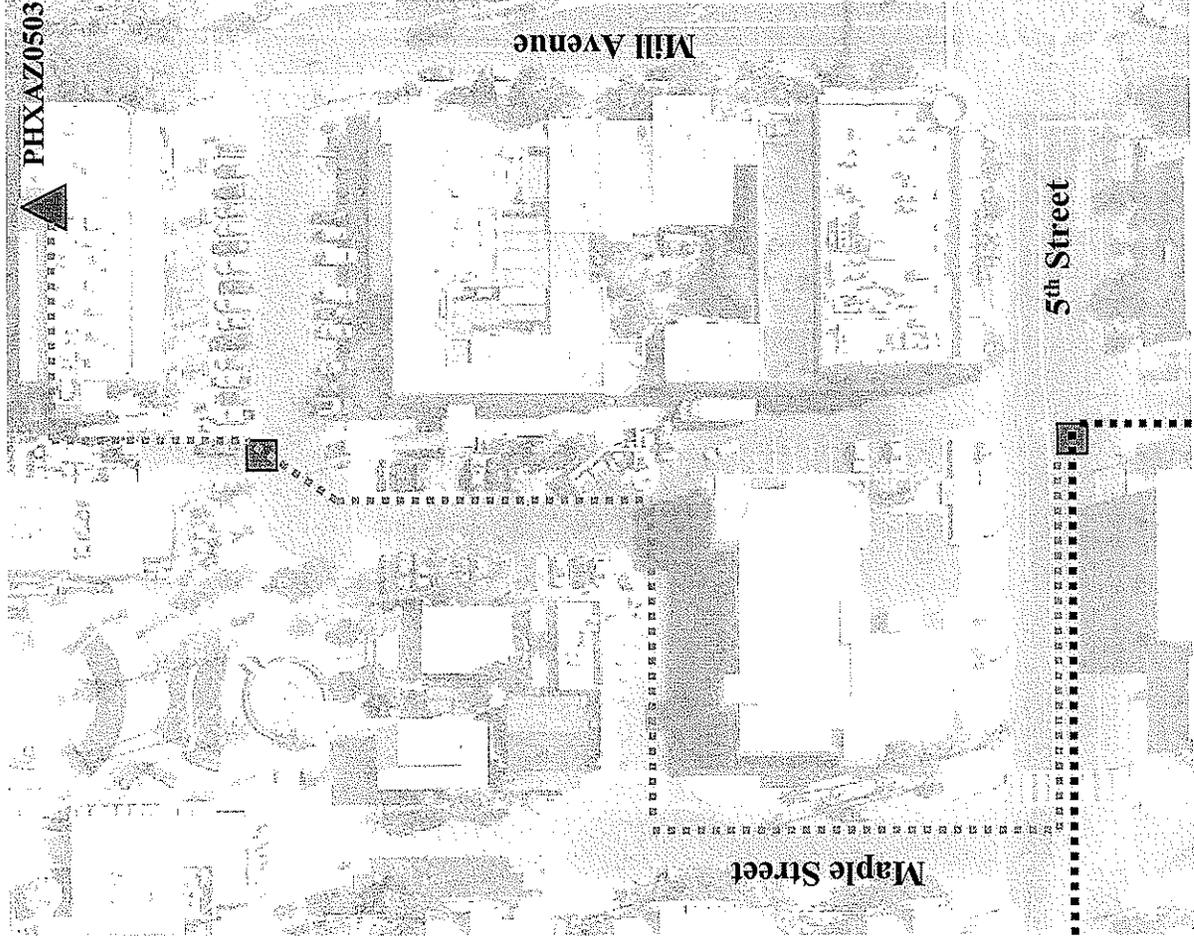
- 1.) Place conduit from SRP access point to proposed ZMH then into Sprint Site.
- 2.) Pull fiber from SRP access point to ZMH then into Sprint Site.
- 3.) Splice fiber at ZMH.

Legend

- Existing SRP Backbone
- xxxxxxx Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed SRP Access Point
- ▲ Sprint Cell Site

PHXAZ0503 – 398 South Mill Avenue, Tempe

EXHIBIT A - TOWER CLOUD



Construction Notes:

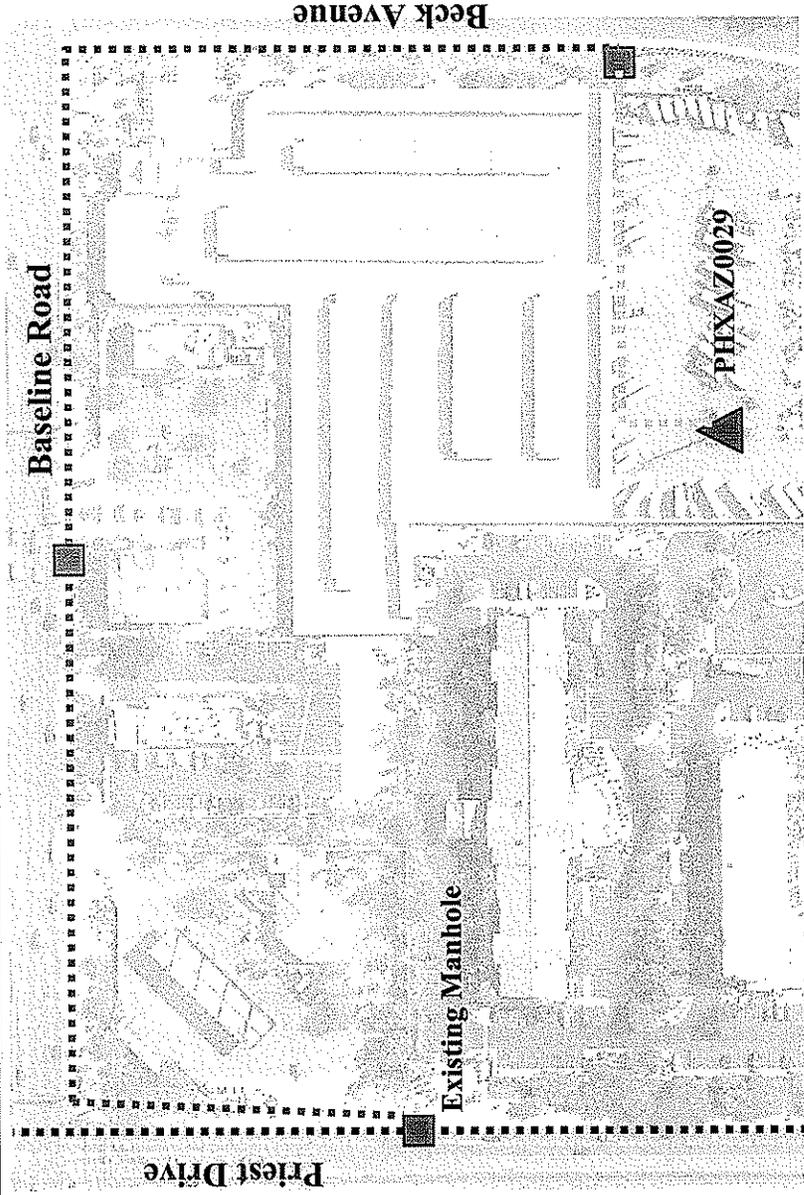
- 1.) Place conduit from SRP access point to proposed ZMH then into Sprint Site.
- 2.) Pull fiber from SRP access point to ZMH then into Sprint Site.
- 3.) Splice fiber at ZMH.

Legend

- Existing SRP Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed SRP Access Point
- ▲ Sprint Cell Site

EXHIBIT A - TOWER CLOUD

PHXAZ0029 – 1403 West Baseline Road, Tempe



Legend

- Fiber Pathway by Others
- Existing AGL Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed AGL Access Point
- ▲ Sprint Cell Site

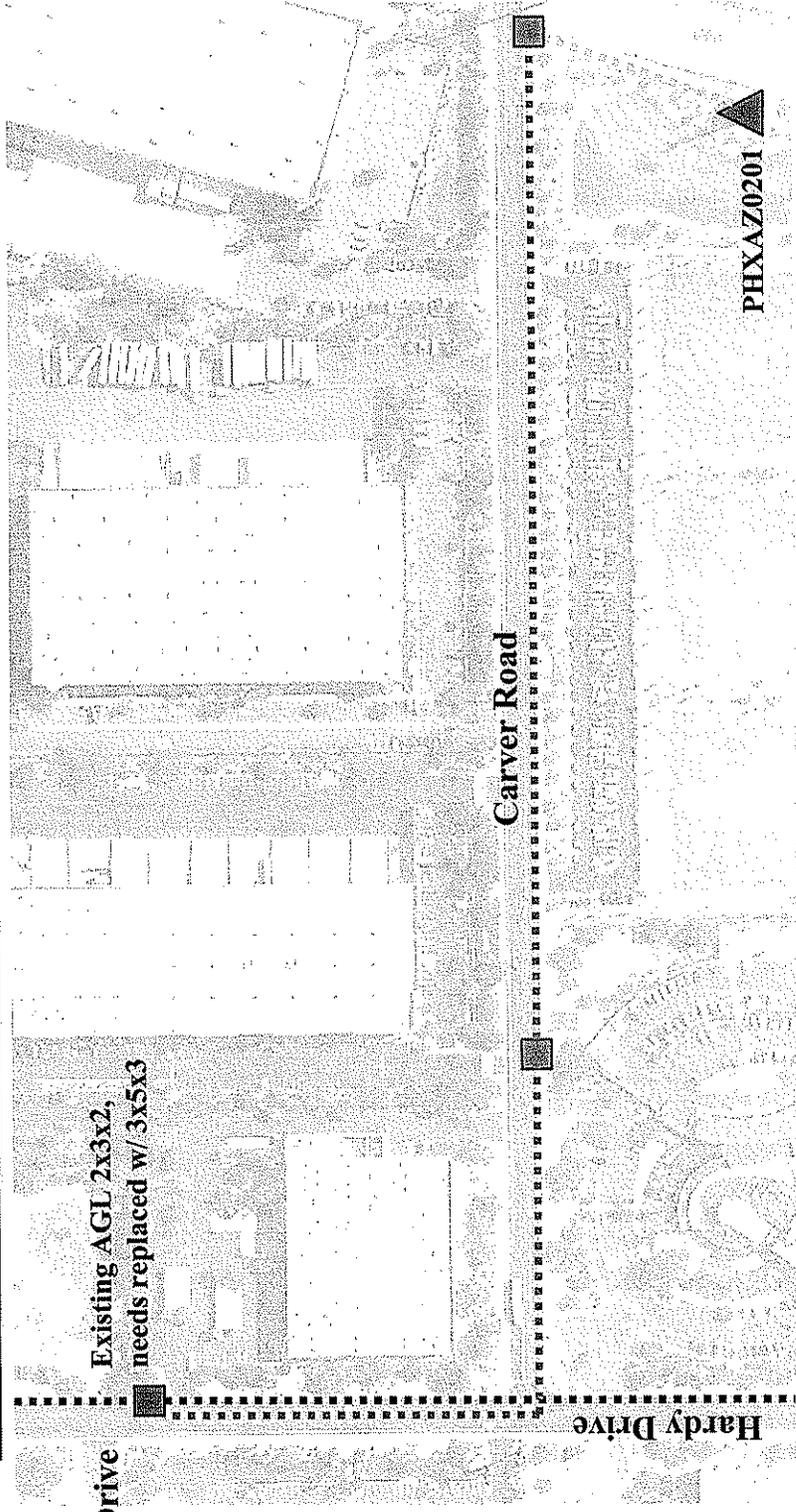
Construction Notes:

- 1.) Place conduit from AGL access point to proposed ZMH.
- 2.) Pull fiber from AGL access point to ZMH.
- 3.) Splice fiber at ZMH.



EXHIBIT A - TOWER CLOUD

PHXAZ0201 – 735 West Carver Road, Tempe



Auto Drive

Existing AGL 2x3x2,
needs replaced w/ 3x5x3

Carver Road

Hardy Drive

PHXAZ0201

Legend

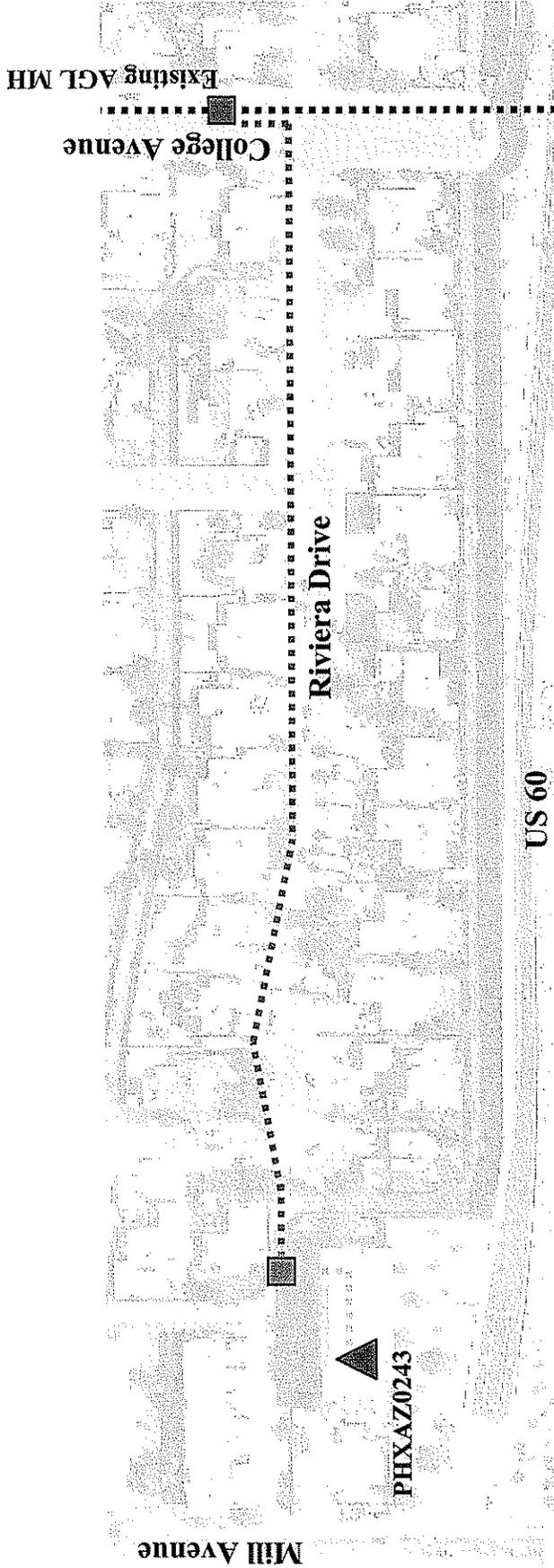
- Fiber Pathway by Others
- Existing AGL Backbone
- Proposed 2" Conduit
- ▣ Proposed Pullbox/Manhole
- ▣ Proposed AGL Access Point
- ▲ Sprint Cell Site

Construction Notes:

- 1.) Place conduit from AGL access point to proposed ZMH.
- 2.) Pull fiber from AGL access point to ZMH.
- 3.) Splice fiber at ZMH.



EXHIBIT A - TOWER CLOUD
PHXAZ0243 – 4025 South Mill Avenue, Tempe



Legend

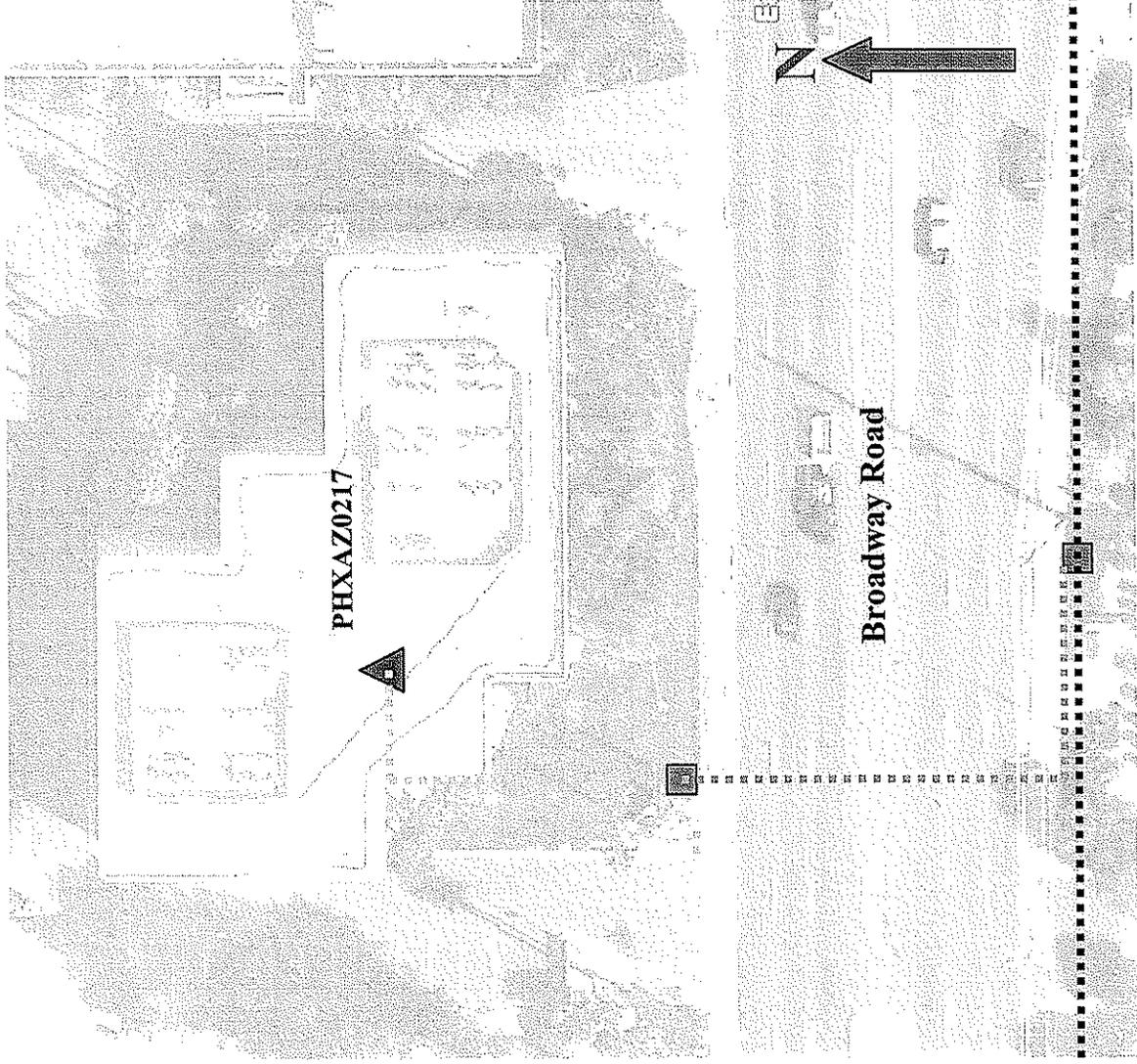
- Fiber Pathway by Others
- Existing AGL Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed AGL Access Point
- ▲ Sprint Cell Site

Construction Notes:

- 1.) Place conduit from AGL access point to proposed ZMH.
- 2.) Pull fiber from AGL access point to ZMH.
- 3.) Splice fiber at ZMH.



PHXAZ0217 – 2164 East Broadway Road, Tempe



Construction Notes:

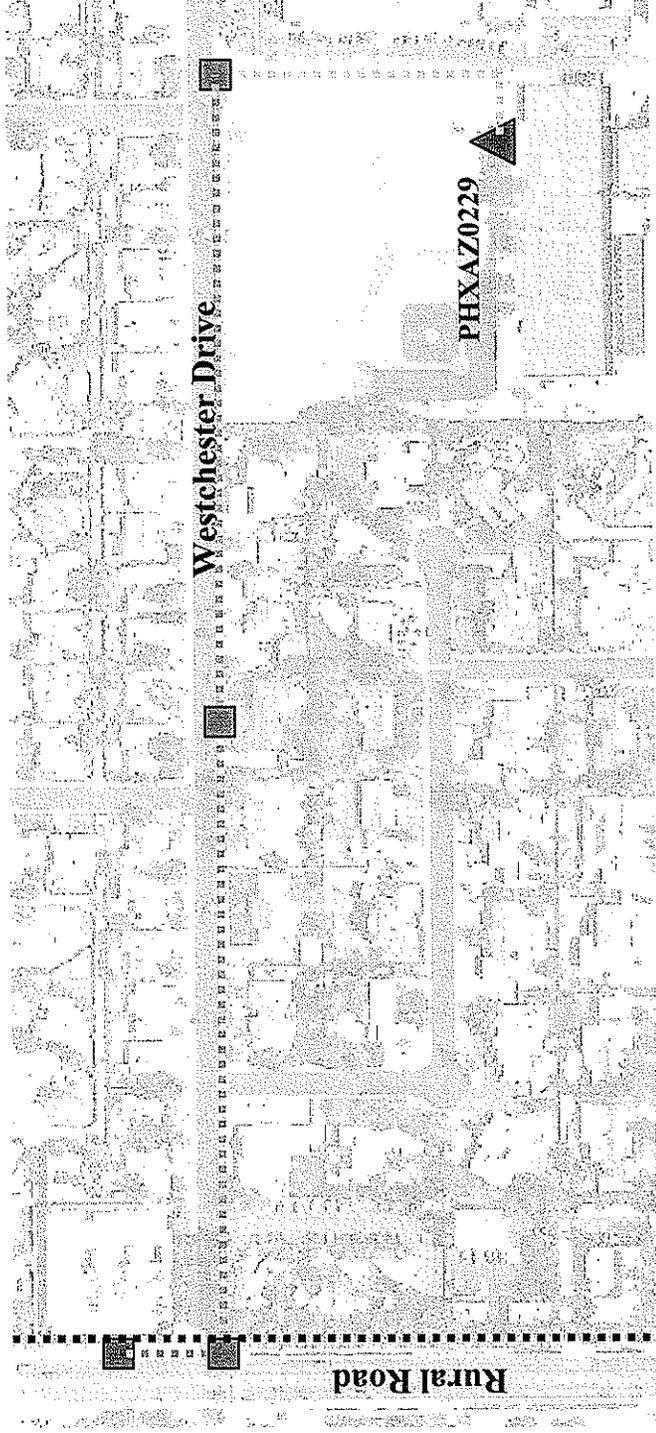
- 1.) Place conduit from SRP access point to proposed ZMH.
- 2.) Pull fiber from SRP access point to ZMH.
- 3.) Splice fiber at ZMH.

Legend

- Fiber Pathway by Others
- Existing SRP Backbone
- . - . - . Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed SRP Access Point
- ▲ Sprint Cell Site

EXHIBIT A - TOWER CLOUD

PHXAZ0229 – 6000 South Lakeshore Drive, Tempe



Legend

- Fiber Pathway by Others
- Existing SRP Backbone
- Proposed 2" Conduit
- Proposed Pullbox/Manhole
- Proposed SRP Access Point
- ▲ Sprint Cell Site

Construction Notes:

- 1.) Place conduit from SRP access point to proposed ZMH.
- 2.) Pull fiber from SRP access point to ZMH.
- 3.) Splice fiber at ZMH.



EXHIBIT B – TOWER CLOUD

IRREVOCABLE LETTER OF CREDIT
[ON BANK OR LENDING INSTITUTION LETTERHEAD]

DATE:

BENEFICIARY:
CITY OF TEMPE
ATTN: CITY ENGINEER
31 E 5TH STREET
TEMPE, AZ 85281

APPLICANT:

STANDBY LETTER OF CREDIT NO: _____

CURRENCY/AMOUNT: USD –FIFTY THOUSAND DOLLARS (\$ 50,000.00)

ISSUE DATE: _____

EXPIRATION DATE: _____

WE, _____, A FEDERALLY INSURED BANK, HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT (TOGETHER WITH ANY REPLACEMENTS, EXTENSIONS OR MODIFICATIONS, THE “CREDIT”) IN FAVOR OF CITY OF TEMPE, ARIZONA, (BENEFICIARY) FOR _____ (ACCOUNT PARTY).

WE ARE INFORMED THAT THIS IRREVOCABLE LETTER OF CREDIT IS ISSUED TO GUARANTEE THAT ALL TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN _____ [Account Party] AND THE CITY OF TEMPE ENTERED INTO AS OF _____ WILL BE FULLY COMPLIED WITH BY _____ [Account Party].

THIS IRREVOCABLE LETTER OF CREDIT IS NOT TRANSFERABLE.

WE AUTHORIZE THE CITY OF TEMPE TO DRAW ON THE ISSUER UP TO AN AGGREGATE AMOUNT OF FIFTY THOUSAND DOLLARS (\$50,000) IN U.S. CURRENCY.

WE GUARANTEE THAT THIS SUM SHALL BE AVAILABLE UPOON DEMAND BY THE CITY OF TEMPE, AVAILABLE BY YOUR DRAFTS AT SIGHT OR BY ELECTRONIC TRANSMISSION.

EACH DRAFT MUST STATE THAT IT IS DRAWN ON IRREVOCABLE LETTER OF CREDIT NUMBER _____ AND BE ACCOMPANIED BY A WRITTEN STATEMENT THAT THE _____ [Account Party] HAS NOT PERFORMED ONE OR MORE OF ITS OBLIGATIONS UNDER THE AGREEMENT BETWEEN CITY OF TEMPE, ARIZONA AND _____, AS SUCH AGREEMENT MAY BE AMENDED FROM TIME TO TIME.

EXHIBIT B – TOWER CLOUD

THE AMOUNT OF EACH DRAFT MUST BE ENDORSED ON THIS IRREVOCABLE LETTER OF CREDIT. THIS IRREVOCABLE LETTER OF CREDIT MUST BE ATTACHED TO THE DRAFT WHEN THE CREDIT AVAILABLE HEREUNDER IS EXHAUSTED.

WE ARE AUTHORIZED TO ACCEPT ANY STATEMENT FURNISHED HEREUNDER AS BINDING AND CORRECT WITHOUT INVESTIGATION OR RESPONSIBILITY FOR THE ACCURACY, VERACITY, AND CONCLUSIVENESS OF VALIDITY OF SAME OR A PART THEREOF.

THIS IRREVOCABLE LETTER OF CREDIT IS EFFECTIVE AS OF _____[Date].

THIS IRREVOCABLE LETTER OF CREDIT IS VALID FOR A PERIOD OF ONE YEAR AND SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE ONE YEAR PERIODS, UNLESS WE NOTIFY YOU AT LEAST NINETY (90) DAYS PRIOR TO THAT DATE IN WRITING BY REGISTERED MAIL TO THE CITY ENGINEER, 31 E. FIFTH STREET, TEMPE, ARIZONA AND A COPY TO THE CITY ATTORNEY'S OFFICE, 21 E. SIXTH STREET, SUITE #201, TEMPE, ARIZONA 85281, THAT WE ELECT NOT TO RENEW THIS LETTER OF CREDIT.

WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS IRREVOCABLE LETTER OF CREDIT WILL BE HONORED UPON PRESENTATION TO THE ISSUER.

IF ANY ACTION OR PROCEEDINGS INITIATED IN CONNECTION WITH THIS IRREVOCABLE LETTER OF CREDIT, AND/OR ANY AMOUNT OR OBLIGATIONS ARISING HEREUNDER, THE VENUE SHALL BE MARICOPA COUNTY, ARIZONA.

THIS IRREVOCABLE LETTER OF CREDIT IS SUBJECT TO AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ARIZONA AND COMPLIES WITH A.R.S. §§ 47-5101 et seq.

(AUTHORIZED SIGNATURE)

(DATE)

(PRINT NAME)

(TITLE)

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICES FOR COMMERCIAL DOCUMENTARY CREDITS" PROMULGATED BY THE XIII CONGRESS OF THE INTERNATIONAL CHAMBER OF COMMERCE (INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 600, 2007 REVISION).