



**PUBLIC NOTICE  
REGULAR MEETING FOR THE COMMON COUNCIL OF  
YOUNGTOWN, ARIZONA**

The Town of Youngtown provides notice that it will conduct its Town Council meeting on **December 3, 2020** through technological means in order to minimize the spread of COVID-19. Council members will attend the Council meeting via telephone, as authorized by A.R.S. Section 38-431(4). The public may listen to the Town Council meeting by calling in telephonically using the conference call and meeting identification number provided below.

**Please state your name when you call in, then mute your telephone for the remainder of the call to ensure the Town Council can conduct its meeting without interference. No in-person attendance is available.**

The Mayor authorizes this action to serve the goal of protecting Town residents, staff, and in the interests of public safety. We thank you for your understanding. If you would like to comment on any matter on the agenda, please download a public comment form and submit it via email to Town Clerk Nicole Smart, [nsmart@youngtownaz.org](mailto:nsmart@youngtownaz.org) at least one hour before the meeting. **The Town Clerk will read public comments submitted before the meeting into the record. You may also comment during the public hearing portion of the agenda by unmuting your phone and providing verbal comments.**

**DATE:** December 3, 2020  
Immediately following the Board of Adjustment  
5:30 p.m.  
**PLACE:** Join the Regular Meeting by phone: 1-346-248-7799  
Meeting ID: 993 5816 4722  
Password: 303372  
Link to the zoom meeting:  
<https://zoom.us/j/99358164722?pwd=Q2xIS2FZQ2t6eVZKTXMhOERuUXhKUT09>

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance and Invocation**
4. **Summary of Current Events:** Brief Summary of Current Events pursuant to ARS § 38-431.02(K). Council may not propose, discuss or take legal action on the current event updates.
  - A. Summary of Current Events from Mayor and Council.
  - B. Summary of Current Events from Town Manager.

5. **Staff Reports:** Staff may provide reports to Council on the following subjects which may include discussion with Council. Council will not take legal action.
  - A. **Library:** The Library Manager may report to Council on library operations, monthly activities, book club events, and upcoming author visits.
  - B. **Public Works:** The Public Works Manager may report to Council regarding maintenance of Town facilities, recreational facilities, streets, parks, and schedules for work in the Town.
  - C. **Community Development:** The Community Development Manager and/or Community Development Coordinator may report to Council regarding business outreach, economic development projects, and code enforcement operations and activity reports.
  - D. **Finance:** The Finance Manager may report to Council regarding the Town's budget and monthly expenditures.
  - E. **Town Clerk:** The Town Clerk may report to Council regarding Town events, activities, meetings, and promotion of the Town on its website and social media sites.
  - F. **Municipal Court:** The Court Administrator may report to Council regarding activities of the Municipal Court, citations, hearings and schedules.
6. **Response to Call to the Community**
7. **Citizens Comments/Appearances from the Floor:** Please complete a speaker request form for the Town Clerk, listing the subject you would like to discuss. Each speaker is limited to five (5) minutes. Before you begin to speak, identify yourself clearly by stating for the record your name and address. Non-Agenda items: This is the time for citizens who would like to address the Town Council on any non-agenda item. The Council will listen to comments, and may take one of the following: 1) Respond to criticism; 2) Request that staff investigate and report on the matter; or 3) Request that the matter be scheduled on a future agenda.
8. **Consent**
  - A. **Approval of Minutes:**
    - i. Regular meeting minutes of **November 19, 2020**
9. **Business**
  - A. **Presentation, Discussion and /or Action Re:** Approval of the One Arizona Plan (Stuhan)
  - B. **Presentation, Discussion and /or Action Re:** Approval of Ordinance 2020-04 Wired Facilities in Right-of-Way adopting Title 22 (Stuhan)
10. **Call to Executive Session:** Convene Executive Session pursuant to ARS § 38-431.03(A)(3) for discussion or consultation for legal advice with the Town Attorney regarding any above agenda items, as needed.
11. **Future Agenda & Meetings**
  - A. There may be discussion of whether to place an item on a future agenda and the date, but not the merits of the item.
  - B. Announcement of the next Regular Council Meeting: **Thursday, December 17, 2020.**

## **Adjournment**

\*NOTE: Persons with special accessibility needs, including large print materials or interpreter, should contact the Town Clerk's office at (623) 933-8286 or TDD (623) 974-3665 no later than 24 hours in advance of regular scheduled meeting times. Citizens may appear before the Council to present their views on any subject concerning Town Government. The Council, however, may not discuss, consider or decide items NOT on the Agenda (ARS § 38-431.02 (H)) The Council will, if necessary, follow up at a later date. Due to limitation of time, citizens' comments are requested not to exceed five (5) minutes.

**POSTING CERTIFICATION OF THIS NOTICE**

The undersigned hereby certified that a copy of the attached notice and agenda were duly posted by 6:00 p.m. on **December 1, 2020** in the Town's designated posting locations pursuant to Resolution No. 06-04 and on the Town's website.

  
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Nicole Smart, Town Clerk



**STAFF REPORT TO COUNCIL**

**DEPARTMENT: *General Government***

**DEPARTMENT REPORT SUBMITTED BY:  
*Town Manager, Jeanne Blackman***

**REPORT:**

- **Mayor LeVault and I met with Public Works Manager Marty Mosbrucker on placement of solar speed limit signs in Town.**
- **Hosted virtual West Valley Managers' meeting**



**STAFF REPORT TO COUNCIL**

<b>DEPARTMENT:</b> LIBRARY	<b>DEPARTMENT REPORT SUBMITTED BY:</b> HEIDI SPEED
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**REPORT:**

The Library remains closed to the public however we have e-books, photocopies, faxes, Wi-Fi, phone calls, and reference services available Monday thru Friday from 10:00 am – 4:00 pm.

We continue to offer Curbside Service Monday thru Thursday, from 10:30 am – 3:30 pm, for checking out books and movies. Our Card Catalog is linked to the Town website and our Facebook page, to provide patrons with an ability to put books and movies on hold for pick-up.

We are checking into offering virtual programming for children, such as Story Time, and other options for adults.

We are in the process of doing an inventory of every item in our card catalog to check for accuracy and availability.

Reopening plans are continually being evaluated with the Town Manager on a regular basis.



## STAFF REPORT TO COUNCIL

<b>DEPARTMENT:</b> Marty Mosbrucker	<b>DEPARTMENT REPORT SUBMITTED BY:</b> Marty Mosbrucker, Public Works Manager
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### REPORT:

- Working with the Town Engineer in addressing the county to conduct a flood study of the county bordering Youngtown.
- Monitoring the LGI Homes project clearing and crushing project.
- New janitorial service to commence December 1.



## STAFF REPORT TO COUNCIL

<b>DEPARTMENT: Community Development</b>	<b>DEPARTMENT REPORT SUBMITTED BY:</b> <i>Community Development Manager, Gregory Arrington</i>
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- CODE ENFORCEMENT LEAGUE OF ARIZONA
  - MONTHLY BOARD MEETING
- TOWN OF YOUNGTOWN
  - CITIZEN HEARING - PLANNING AND ZONING



## STAFF REPORT TO COUNCIL

<b>DEPARTMENT:</b> Town Clerk/Community Development Coordinator	<b>DEPARTMENT REPORT SUBMITTED BY:</b> Nicole Smart
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### REPORT:

- Attended the Code Enforcement League of Arizona monthly Board meeting.
- Attended the Planning and Zoning Variance Hearing.
- Attended the Citizens' Review Hearing.
- Continue to work on record retention and cleanup of old files that have exceeded the required retention period.
- Continue work on Town inventory list.
- I would encourage all staff and Council to "like" the Town's page and submit pictures and stories. [www.facebook.com/townofyoungtownaz](https://www.facebook.com/townofyoungtownaz).





## STAFF REPORT TO COUNCIL

<b>DEPARTMENT:</b> Youngtown Municipal Court	<b>DEPARTMENT REPORT SUBMITTED BY:</b> <i>Court Administrator – Lisa Lipinski</i>
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### **REPORT:**

No formal presentation will be given on the following items:

**The court has seen a decrease in defendants appearing for court.**

**Last week a total of 12 failure to appear warrants were issued for pretrial court session held on Thursday, November 12<sup>th</sup>, 2020. This time of year, the failure to appears typically increase, but it is unknown if COVID-19 is a factor in this increased failure to appear trend.**

### **The Youngtown Municipal Court daily operations include:**

**Handling general inquires, payments in person and by phone, collection contact for past due cases, sentencing of cases and processing warrants for failure to appear/non-compliance on classes, jail or probation. Assisting citizens to refer to correct court for handling cases, providing contact information for law enforcement, animal control, directions to other town services and local businesses.**



**MINUTES OF THE REGULAR TELEPHONIC  
MEETING COMMON COUNCIL OF YOUNGTOWN, AZ  
12033 N. CLUBHOUSE SQUARE, TOWN COUNCIL CHAMBERS  
THURSDAY, NOVEMBER 19, 2020 at 5:30 P.M.**

1. **Call to Order:** Mayor LeVault called the meeting to order at 5:36 p.m.
2. **Roll Call:** Council present telephonically: Mayor Michael LeVault, Vice Mayor Chuck Vickers, Council Members, Margaret Chittenden, June Miller, Susan Hout, Karen Haney Duncan, and Jack Duran.

Mayor Michael LeVault noted that a quorum is established for transacting business.

Staff present telephonically: Town Manager Jeanne Blackman, Town Attorney Trish Stuhan, Community Development Manager Gregory Arrington, Library Manager Heidi Speed and Town Clerk Nicole Smart.

3. **Pledge of Allegiance and Invocation:** Councilmember Hout led the Pledge and Councilmember Duran gave the Invocation.
4. **Administration of the Oath of Office**
  - A. Mayor LeVault mentioned that Councilmember Jack Duran, Susan Hout, and Chuck Vickers did their Oath of Office in Town Hall with Town Clerk Nicole Smart during the week. Councilmembers were sworn in as Town Councilmembers for a term expiring in November, 2024.
  - B. Selection of the Vice Mayor.

Mayor LeVault asked for nominations for Vice Mayor. Councilmember Miller nominated Councilmember Charles Vickers, and Councilmember Hout nominated Councilmember Chittenden. Councilmember Duran made the first motion to nominate Councilmember Charles Vickers. Councilmember Chittenden second nomination to elect herself.

Roll Call to nominate Councilmember Charles Vickers for Vice Mayor.  
Ayes – Councilmember Vickers, Duran, Miller, Haney Duncan, and Mayor LeVault.  
Nays – Councilmember Chittenden and Hout.

Councilmember Chuck Vickers received a majority of votes for Vice Mayor.

**5. Summary of Current Events:**

**A. Summary of Current Events from Mayor and Council.**

Mayor LeVault stated that during the Valley Metro meeting they reviewed the first quarter budget and revenue performance. Valley Metro is right on budget in regards to revenues taken in, and below budget in expenditures. The Board also spoke about the Prop 400 in 2004, Maricopa County voters approved an extension of the half-cent sales tax for transportation by 20 years. It is set to expire in 2025. Under Proposition 400 upgrades continue along Loop 303, a major north south freeway in the West Valley. The freeway connects I-10 on the south to I-17 on the north. The funds covered some of the major transportation projects in the valley.

In the new year, Mayor LeVault would like to have a representative from Valley Metro Regional Public Transportation Authority and Maricopa Association of Governments to do a presentation for Councilmembers to have a refresher on the programs and services they provide to the West Valley.

Mayor LeVault stated that it is important that we do a Council retreat at the beginning of the New Year. We can meet in a meeting room at the Wigwam, and still follow the CDC guidelines. The Mayor would like to review the viability of the Town going forward, we as Council needs to stay on top of it. Mayor LeVault would like to review the Model Town Tax Code, and services that we are providing to our Town.

Mayor LeVault stated to Council that we need to do Town Manager Blackman's review. Mayor LeVault stated that the performance review will be in councilmember's mailbox, and we will discuss this during the Town's retreat.

Councilmember Miller suggested that we will need to have a large room during the retreat, and also have microphones so we can hear each other speak.

Councilmember Chittenden agrees on the Council retreat. Councilmember Chittenden stated that citizens and the dogs are enjoying the dog park.

Mayor LeVault thanked Councilmember Chittenden for all the hard work she is doing with the dog park.

**B. Summary of Current Events from Town Manager**

Town Manager Blackman met with Mayor LeVault and representatives from Comfort Inn and Maricopa County Sheriff's Office to discuss homelessness.

Town Manager Blackman met with Mayor LeVault and Shawn Parks and Ryan Taylor from Parks & Sons on the future of their bulk trash pickup program.

Town Manager Blackman met with Mayor LeVault and with Tiffany Teague of American Family Insurance to discuss issues within the community.

Town Manager Blackman and Town Attorney Trish Stuhan met with Judge Lex Anderson and Court Administrator Lisa Lipinski on changes to our traffic enforcement procedures

Town Manager Blackman met with Community Development Manager Gregory Arrington, Code Enforcement and one of the property managers over at Mountain View Apartments regarding code issues.

6. **Staff Reports:**

- A. **Library:** No formal report was given.
- B. **Public Works:** No formal report was given.
- C. **Community Development:** No formal report was given.
- D. **Finance:** No formal report was given.
- E. **Town Clerk:** No formal report was given.
- F. **Municipal Court:** No formal report was given.

7. **Response to Call to the Community:** No response to Call to the Community.

8. **Citizens Comments/Appearances from the Floor:** No comments from the floor.

9. **Consent**

A. **Approval of Minutes:**

Regular meeting minutes of **November 5, 2020**

Motion to approve the Consent Agenda – Councilmember Haney Duncan  
Second – Vice Mayor Vickers

***Motion passed unanimously on a voice vote with all Councilmembers in attendance voting.***

10. **Business**

A. **Presentation, Discussion and /or Action Re:** Presentation of the financial first quarter report for FY2021, July 1 thru September 30, 2020.

Financial Consultant Pat Walker, of Pat Walker Consulting, was in attendance to present the financial first quarter report for FY 2021, July 1, 2020 thru September 30, 2020, and answer questions from Council.

Financial Consultant Pat Walker presented a comprehensive fiscal year 2020-21 (FY2021), first quarter (July 2020 – September 2020) financial report. This report included a financial status summarization for the general fund and highway user fund (HURF), a description of major revenue categories and a comparison to the first quarter year-to-date (FY21) to fiscal year 2019-2020 (FY2020). Pat Walker stated she did not include a FY2021 year-end financial projection because at this point in the fiscal year there is only three (3) months of revenue and expenditures to date. The Town is currently doing well and we are still monitoring for additional impacts due to the pandemic.

- B. Presentation, Discussion and/or Action Re:** Sun City Fire and Medical District (SCFD) Report, which may include discussion of inspections, fire prevention, staffing levels, response times, community needs, and ambulance services.

Fire Marshall Jim Fox was in attendance to present the Sun City Fire and Medical District (SCFD) October report, which may include discussion of inspections, fire prevention, staffing levels, response times, community needs, and ambulance services, and answer questions from Council.

Fire Marshall Jim Fix reviewed the Sun City Fire and Medical District monthly reports, including discussion of inspections, fire prevention, response times.

- C. Presentation, Discussion and/or Action Re:** Maricopa County Sheriff's Office (MCSO) Report, which may include discussion of crime statistics, specific crimes including traffic violations, thefts, violent crimes, trespass and issues with homelessness, crime prevention, MCSO staffing levels, community needs, and response times.

Captain Brian Stutsman was in attendance to present the Maricopa County Sheriff's Office (MCSO) October reports, which may include discussion of crime statistics, specific crimes including traffic violations, thefts, violent crimes, trespass and issues with homelessness, crime prevention, MCSO staffing levels, community needs, and response times, and answer questions from Council.

Captain Brian Stutsman reviewed the Maricopa County Sheriff's Office monthly reports, including a review of crime statistics, crimes including traffic violations, thefts, violent crimes, trespass and issues with homelessness, etc.

- D. Presentation, Discussion and /or Action Re:** Presentation from Monica Yelin, Community Outreach Liaison from Debbie Lesko's office and to tell public and council about the services congressional offices provide.

Monica Yelin, Community Outreach Liaison from Debbie Lesko's office was in attendance to present and tell the public and council about the services congressional offices provide, and answer questions from Council.

Monica Yelin stated that she is the Community Outreach Liaison from Debbie Lesko's office and represents Congressional District 8, which Youngtown is in. Their office serves constitutes, non-profits, organizations, and anyone in this district. They are here to help businesses with any issues in regards to Federal Agencies. They provide different services and you can go to their website at [lesko.house.gov](http://lesko.house.gov) additional information.

Mayor LeVault asked if we can have her business cards, and pamphlets to put in the Town Lobby.

Monica Yelin stated she will drop off pamphlets and business cards.

**E. Presentation, Discussion and /or Action Re:** Approve additional expense and award contract to lowest bidder for the Library Expansion Project.

Heidi Speed Library Manager was in attendance to present approval for additional expenses and award contract to the lowest bidder for the Library Expansion Project, and answer questions from Council.

Heidi Speed Library Manager is requesting Council for approval of additional funding in the amount of \$255,600.00, plus contingency amount of \$30,000.00 misc./architects fees for a total of \$285,600.00, and accept the low bid and award a contract to Kroll Contractors, Inc., in the amount of \$401,000.00 for the library addition

Heidi Speed Library Manager stated that we were previously awarded a SGIAC State Grant in the amount of \$38,200.00 and approval from Council for a Town match of \$38,200.00. Because of unforeseen delays, we received an extension from the State to complete this project by June 21, 2021. Some of the delays included: Architectural plans had to be redrawn several times by the architects, a flood zone issue (that has since been rectified), adding sprinklers to the original building and addition, and rising construction costs. Nine bids were received with Kroll Contractors being the lowest bid.

Mayor LeVault asked how many square feet for the new addition, and when do we have to use the grant money by.

Heidi Speed Library Manager stated there is about a thousand square feet for the new addition, and the grant money has to be used by June 30, 2021.

Discussion followed including discussion to reject all bids, construction of the addition, and grant money received for the addition of the library.

*Reject of all bids for the addition of the library, and table this item for a future council meeting.*

*Vice Mayor Vickers*

*Second – Councilmember Duran*

***Motion passed unanimously on a voice vote with all Councilmembers in attendance voting.***

**F. Presentation, Discussion and /or Action Re:** Consideration and possible adoption of a notice of intent to adopt new fees on Marijuana Establishments and increase fees for Medical Marijuana Dispensaries and Medical Marijuana Cultivation, Infusion, or Manufacturing Facilities to recover costs to regulate medical marijuana dispensaries and cultivation facilities and adopt fees for marijuana establishments in response to the Smart and Safe Arizona Act.

Town Attorney Trish Stuhan and Community Development Manager Gregory Arrington, were in attendance to present for consideration and possible adoption of a notice of

intent to adopt new fees on Marijuana Establishments and increase fees for Medical Marijuana Dispensaries and Medical Marijuana Cultivation, Infusion, or Manufacturing

Facilities to recover costs to regulate medical marijuana dispensaries and cultivation facilities and adopt fees for marijuana establishments in response to the Smart and Safe Arizona Act, and answer questions from Council.

Town Attorney Stuhan stated that per pursuant to A.R.S. § 9-499.15, the Town of Youngtown, Arizona, ("Town"), hereby gives notice that it may adopt new fees on Marijuana Establishments and increase fees for Medical Marijuana Dispensaries and Medical Marijuana Cultivation, Infusion, or Manufacturing Facilities. The notice will be posted on the Town's Website.

The amendments are intended to recover costs to regulate medical marijuana dispensaries and cultivation facilities and adopt fees for marijuana establishments in response to the Smart and Safe Arizona Act. A schedule of fees with supporting information is attached.

The Town Council will consider this matter at its regular Town Council meeting to be held on January 21, 2021 at 5:30 p.m. Following such consideration, the Town Council may approve, disapprove or modify said fees.

The proposed fees are as follows:

**Business License Fees.**

- Amend Title 5 Business Licenses and Regulations, Chapter 5.04 Business Licenses Generally, Section 5.04.080 Schedule of Fees to adopt new fees for Marijuana Establishments.
  - Classification: Marijuana Establishment
  - License Fee:
    - Business License Application Fee: \$2500
      - Estimate is calculated at \$150 an hour and provides just over 16 hours of review by community development, police, fire, town attorney and other necessary staff and contractors. The fee provides for management of additional traffic, law enforcement, and public safety needs concerning the locations of the facilities.
    - Annual Renewal Fee (if no changes): \$750
      - Estimate is calculated at \$150 an hour and provides 5 hours for work involved in the renewal reviews and processing to address ongoing operations and continued compliance with laws.
- Amend Title 5 Business Licenses and Regulations, Chapter 5.04 Business Licenses Generally, Section 5.04.080 Schedule of Fees to amend fees for Medical Marijuana Dispensaries.
  - Classification: Medical Marijuana Dispensary
    - Initial Business License Fee: \$2500

- Estimate is calculated at \$150 an hour and provides just over 16 hours of review by community development, police, fire, town attorney and other necessary staff and contractors. The fee provides for management of additional traffic, law enforcement, and public safety needs concerning the location of the facilities.
  - Annual Renewal Permit Fee (if no changes): \$750
    - Estimate is calculated at \$150 an hour and provides 5 hours for work involved in the renewal reviews and processing to address ongoing operations and continued compliance with laws.
- Amend Title 5 Business Licenses and Regulations, Chapter 5.04 Business Licenses Generally, Section 5.04.080 Schedule of Fees to amend fees for Medical Marijuana Cultivation, Infusion, or Manufacturing Facility.
  - Classification: Medical Marijuana Cultivation, Infusion, or Manufacturing Facility
    - Initial Business License Fee: \$2500
      - Estimate is calculated at \$150 an hour and provides just over 16 hours of review by community development, police, fire, town attorney and other necessary staff and contractors. The fee provides for consideration of management of additional traffic, law enforcement, and public safety needs concerning the locations of the facilities.
    - Annual Renewal Permit Fee (if no changes): \$750
      - Estimate is calculated at \$150 an hour and provides 5 hours for work involved in the renewal reviews and processing to address ongoing operations and continued compliance with laws.

### **Zoning Fees.**

- Staff is recommending adoption of new fees to address zoning verification and security costs related to marijuana establishments and new medical marijuana dispensaries.
  - Zoning Certification Letter: \$300
  - Estimate of 2 hours of staff time at a rate of \$150 an hour.
  - Background and Security Review Fee: \$450
  - Estimate of 3 hours of review at a rate of \$150 an hour.

Discussion followed including the consideration and possible adoption of a notice of intent to adopt new fees on Marijuana Establishments and increase fees for Medical Marijuana Dispensaries and Medical Marijuana Cultivation, Infusion, or Manufacturing



Facilities to recover costs to regulate medical marijuana dispensaries and cultivation facilities and adopt fees for marijuana establishments in response to the Smart and Safe Arizona Act.

*Approval of a possible adoption of a notice of intent to adopt new fees on Marijuana Establishments and increase fees for Medical Marijuana Dispensaries and Medical Marijuana Cultivation, Infusion, or Manufacturing Facilities to recover costs to regulate medical marijuana dispensaries and cultivation facilities and adopt fees for marijuana establishments in response to the Smart and Safe Arizona Act.*

*Councilmember Haney Duncan  
Second – Vice Mayor Vickers*

***Motion passed unanimously on a voice vote with all Councilmembers in attendance voting.***

**11. Call to Executive Session:** No Call to Executive Session.

**12. Future Agenda & Meetings**

**A.** Future Agenda Items –

**B.** The next Regular Council Meeting will be held on **Thursday, December 3, 2020** beginning at 5:30 p.m.

**Adjournment**

*Motion to Adjourn – Councilmember Miller  
Seconded – Councilmember Chittenden  
Meeting Adjourned 7:20 p.m.*

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Michael LeVault, Mayor

Attest:

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Nicole Smart, Town Clerk

Minutes approved at the December 3, 2020 regular meeting



MARK BRNOVICH  
Attorney General

Office of the Attorney General  
State of Arizona

November 3, 2020

City of Phoenix  
C/O Cris Meyer  
City Attorney  
200 W Washington St 13th Fl  
Phoenix, AZ 85003

Re: One Arizona Opioid Settlement Memorandum of Understanding

Dear Mr. Meyer:

State and local governments across the country have been litigating against the opioid industry in response to their alleged unethical and illegal practices. Arizona now has an opportunity to settle with some of the manufacturers and distributors and secure financial resources to contend with the devastation that has been caused to our communities. **The total amount of money that Arizonans receive is dependent upon the number of local governments that participate, so I invite you to join our efforts.**

A major step to facilitating a resolution with the opioid parties was recently achieved. The State of Arizona and all 15 counties have now agreed to the **One Arizona Opioid Settlement Memorandum of Understanding** (the "*One Arizona Plan*" or "MOU"). This MOU provides a framework for distributing opioid settlement funds fairly and effectively throughout our state. Moreover, the *One Arizona Plan* treats both litigating and non-litigating political subdivisions equally.

Like all states engaged in this process, Arizona's MOU employs certain formulas and data collected by federal agencies such as (i) opioid use disorder rates, (ii) the number of opioid overdose deaths, and (iii) the amount and potency of opioids shipped to each community. U.S. Census Bureau data is also used to determine historical expenditures related to opioid abatement for designated areas. With this in mind, please be assured that my office has made every effort to maximize recovery for all cities and towns. In fact, under the MOU the State government's share of funds actually declines with the participation of more counties and cities. Nevertheless, this structure was agreed to because it will increase the overall benefit to Arizona's residents.

**Also important to consider is what the *One Arizona Plan* will not do.** Unlike some other states, Arizona's *MOU* does not create new foundations, form boards, or make political appointments to control the funding. In fact, our MOU does the exact opposite thus cutting red tape

November 3, 2020

Re: One Arizona Opioid Settlement Memorandum of Understanding

and streamlining the grant process to quickly get the funds to those in need. Local governments are best able to utilize resources targeted for their constituents, so no state authorization is required for expenditure. The only requirements are that funds be spent in accordance with the approved purposes detailed in the *One Arizona Plan*'s Exhibit A, and that basic reciprocal reporting be completed.

**Standing together, we can maximize critically needed resources to assist Arizonans impacted by the opioid crisis, so our goal is 100% participation among cities and towns.** I urge you to consider the *One Arizona Plan* with your legal counsel, execute the MOU in the space provided and return it to my office. The deadline to submit your signature page is **December 15, 2020 at 5:00 pm.** Any questions that you have may be addressed to Acting Section Chief Matthew du Mée at [Matthew.duMee@azag.gov](mailto:Matthew.duMee@azag.gov), or Assistant Attorney General Jennifer Bonham at [Jennifer.Bonham@azag.gov](mailto:Jennifer.Bonham@azag.gov).

Respectfully yours,



Mark Brnovich  
Attorney General

Enclosures:

One Arizona Opioid Settlement Memorandum of Understanding

Exhibits: A-D

City/Town Signature Page

cc: Joseph Sciarrotta, Jr., AGO Civil Litigation Division Chief Counsel  
Matthew du Mée, AGO Acting Consumer Protection & Advocacy Section Chief Counsel  
Jennifer Bonham, AGO Assistant Attorney General  
Tom Belshe, Executive Director – League of Arizona Cities and Towns  
Christina Estes-Werther, General Counsel – League of Arizona Cities and Towns



MARK BRNOVICH  
Attorney General

Office of the Attorney General  
State of Arizona  
CIVIL LITIGATION DIVISION

JOSEPH SCIARROTTA, JR.  
Division Chief

November 3, 2020

Tom Belshe  
Executive Director  
Christina Estes-Werther  
General Counsel  
League of Arizona Cities and Towns  
1820 West Washington Street  
Phoenix, Arizona 85007

Re: One Arizona Opioid Settlement Memorandum of Understanding

Dear Mr. Belshe and Ms. Estes-Werther:

Enclosed please find the letter Attorney General Mark Brnovich sent to the City of Phoenix. He also sent a letter to each of the other 90 cities and towns included in the list we received from your office. We hope the League of Cities and Towns will support this effort so that Arizona can maximize opioid settlement funds and enhance the recovery for all Arizona communities impacted by the opioid crisis.

Sincerely,

Joseph Sciarrotta, Jr.  
Division Chief  
Civil Litigation Division

JS/mec

Enclosures:  
Letter w/ attachments to City of Phoenix

## **ONE ARIZONA OPIOID SETTLEMENT MEMORANDUM OF UNDERSTANDING**

### **General Principles**

- The people of the State of Arizona and Arizona communities have been harmed by the opioid epidemic, which was caused by entities within the Pharmaceutical Supply Chain.
- The State of Arizona, *ex rel.* Mark Brnovich, Attorney General (the “State”), and certain Participating Local Governments are separately engaged in litigation seeking to hold the Pharmaceutical Supply Chain Participants accountable for the damage they caused.
- The State and the Participating Local Governments share a common desire to abate and alleviate the impacts of the Pharmaceutical Supply Chain Participants’ misconduct throughout the State of Arizona.
- The State and the Participating Local Governments enter into this One Arizona Opioid Settlement Memorandum of Understanding (“MOU”) to jointly approach Settlement negotiations with the Pharmaceutical Supply Chain Participants.
- This MOU has been drafted collaboratively to maintain the Parties’ existing or potential legal claims (to the extent legally cognizable) while allowing the Parties to cooperate in exploring all possible means of resolution.
- Nothing in this MOU binds the Parties to a specific outcome. Any resolution under this MOU will require a subsequent acceptance by the State and the Participating Local Governments of a final opioid Settlement plan.
- Nothing in this MOU should alter or change the right of the State or any Participating Local Government to pursue its own claim. The intent of this MOU is to join the Parties to seek a Settlement or Settlements with one or more Pharmaceutical Supply Chain Participants.

### **A. Definitions**

As used in this MOU:

1. “Approved Purpose(s)” shall mean those uses identified in the agreed Opioid Abatement Strategies attached as Exhibit A.
2. “Litigation” means existing or potential legal claims against Pharmaceutical Supply Chain Participants seeking to hold them accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance relating to the unlawful manufacture, marketing, promotion, distribution, or dispensing of prescription opioids.

3. "Opioid Funds" shall mean monetary amounts obtained through a Settlement as defined in this MOU.
4. "Participating Local Government(s)" shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this MOU. The Participating Local Governments may be referred to separately in this MOU as "Participating Counties" and "Participating Cities and Towns" (or "Participating Cities or Towns," as appropriate).
5. "Parties" shall mean the State and the Participating Local Governments.
6. "Pharmaceutical Supply Chain" shall mean the process and channels through which licit opioids are manufactured, marketed, promoted, distributed, or dispensed.
7. "Pharmaceutical Supply Chain Participant" shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of licit opioids.
8. "Settlement" shall mean the negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the State and the Participating Local Governments.
9. "Trustee" shall mean an independent trustee who shall be responsible for the ministerial task of releasing the Opioid Funds that are in trust as authorized herein and accounting for all payments into or out of the trust.

#### **B. Intrastate Regions**

1. The State of Arizona will be divided into regions, each of which will be referred to as a "Region" and will consist of: (1) a single Participating County and all of its Participating Cities and Towns; or (2) all of the Participating Cities and Towns within a non-Participating County. If there is only one Participating City or Town within a non-Participating County, that single Participating City or Town will still constitute a Region. Two or more Regions may at their discretion form a group ("Multicounty Region"). Regions that do not choose to form a Multicounty Region will be their own Region. Participating Cities and Towns within a non-Participating County may not form a Region with Participating Cities and Towns in another county.
2. The LG Share funds described in Section C(1) will be distributed to each Region according to the percentages set forth in Exhibit B. The Regional allocation model uses three equally weighted factors: (1) the amount of opioids shipped to the Region; (2) the number of opioid deaths that occurred in that Region; and (3) the number of people who suffer opioid use disorder in that Region. In the event any county does not participate in this MOU, that county's percentage share shall be reallocated proportionally amongst the Participating Counties by applying this same methodology to only the Participating Counties.
3. In single-county Regions, that county's health department will serve as the lead agency responsible for distributing the LG Share funds. That health department, acting as the

lead agency, shall consult with the cities and towns in the county regarding distribution of the LG Share funds.

4. For each Multicounty Region, an advisory council shall be formed from the Participating Local Governments in the Multicounty Region to distribute the collective LG Share funds. Each advisory council shall include at least three Participating Local Government representatives, not all of whom may reside in the same county. Each advisory council shall consult with the Participating Local Governments in the Multicounty Region regarding distribution of the collective LG Share funds.
5. For each Region consisting of the Participating Cities and Towns within a non-Participating County, an advisory council shall be formed from the Participating Cities and Towns in the Region to distribute the LG Share funds. Each advisory council shall include at least three representatives from the Participating Cities and Towns in the Region, or a representative from each Participating City and Town if the Region consists of fewer than three Participating Cities and Towns. In no event may more than one individual represent the same city or town. To the extent any Participating Cities or Towns in the Region are not represented on the advisory council, the advisory council shall consult with the non-represented Participating Cities and Towns regarding distribution of the collective LG Share funds.

#### **C. Allocation of Settlement Proceeds**

1. All Opioid Funds shall be divided with 44% to the State ("State Share") and 56% to the Participating Local Governments ("LG Share").<sup>1</sup>
2. All Opioid Funds, regardless of allocation, shall be utilized in a manner consistent with the Approved Purposes definition, as ultimately memorialized in a Settlement that becomes an order of the court. Compliance with this requirement shall be verified through reporting, as set out in Section F.
3. The LG Share will be distributed to each Region as set forth in Section B(2). Participating Counties and their constituent Participating Cities and Towns may distribute the funds allocated to the Region amongst themselves in any manner they choose. If the county and its cities and towns cannot agree on how to allocate the funds, Exhibit C reflects a default allocation that will apply. The default allocation formula uses historical federal data showing how the specific county and the cities and towns within it have made opioids-related expenditures in the past. If the county or any cities or towns within a Region do not sign on to this MOU and subsequent Settlement, and if the Participating Local Governments in the Region cannot agree on how to allocate the funds amongst themselves, they shall reallocate the funds proportionally amongst themselves by applying this same methodology to only the Participating Local Governments in the Region.

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<sup>1</sup> This MOU assumes that any opioid settlement for Native American Tribes and Third-Party Payors, including municipal insurance pools, will be dealt with separately.

4. If the LG Share for a given Participating Local Government is less than \$500, then that amount will instead be distributed to the county in which the Participating Local Government is located to allow practical application of the abatement remedy. If the county did not sign on to the Settlement as defined herein, the funds will be reallocated to the State Share.
5. The State Share shall be paid by check or wire transfer directly to the State through the Trustee, who shall hold the funds in trust in a Qualified Settlement Fund (QSF) for the benefit of the State to be promptly distributed as set forth in C(1) herein. The LG Share shall be paid by check or wire transfer directly to the Participating Local Governments through the Trustee, who shall hold the funds in trust in a QSF for the benefit of the Participating Local Governments to be promptly distributed as set forth in B(2), C(1), C(3), and C(4) herein.
6. The State Share shall be used only for (1) Approved Purposes within the State or (2) grants to organizations for Approved Purposes within the State.
7. The LG Share shall be used only for (1) Approved Purposes by Participating Local Governments within a Region or Multicounty Region or (2) grants to organizations for Approved Purposes within a Region or Multicounty Region.
8. The State will endeavor to prioritize up to 30% of the State Share for: opioid education and advertising related to awareness, addiction, or treatment; Department of Corrections and related prison and jail opioid uses, and opioid interdiction and abatement on Arizona's southern border, including grants to assist with the building, remodeling and/or operation of centers for treatment, drug testing, medication-assisted treatment services, probation, job training, and/or counseling services, among other programs.

#### **D. Participation of Cities and Towns**

1. By virtue of signing on to the MOU and Settlement, each Participating County will receive 60% of its available LG Share. The Participating County will receive up to an additional 40% of its available LG Share by securing the participation of its constituent cities and towns as signatories to this MOU and the Settlement. The sliding scale attached as Exhibit D will determine the share of funds available to the Participating County.
2. If a Participating County does not achieve 100% participation of its cities and towns within the period of time required in a Settlement document for subdivision participation, the remaining portions of the LG Share that were otherwise available to the Participating County will be reallocated to (i) the State Share and (ii) the LG Share for the Participating Counties which have achieved 100% participation of their cities and towns in accordance with the percentages described in Sections B(2), C(1), and C(3), and set forth in Exhibits B and C.

#### **E. Payment of Counsel and Litigation Expenses**

1. The Parties anticipate that any national Settlement will provide for the payment of all or a portion of the fees and litigation expenses of certain state and local governments.



2. If the court in *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) or if a national Settlement establishes a common benefit fund or similar device to compensate attorneys for services rendered and expenses incurred that have benefited plaintiffs generally in the litigation (the "Common Benefit Fund"), and requires certain governmental plaintiffs to pay a share of their recoveries from defendants into the Common Benefit Fund as a "tax," then the Participating Local Governments shall first seek to have the settling defendants pay the "tax." If the settling defendants do not agree to pay the "tax," then the "tax" shall be paid from the LG Share prior to allocation and distribution of funds to the Participating Local Governments.<sup>2</sup>
3. Any governmental entity that seeks attorneys' fees and expenses from the Litigation shall seek those fees and expenses first from the national Settlement. In addition, the Parties agree that the Participating Local Governments will create a supplemental attorney's fees and costs fund (the "Backstop Fund").
4. The Backstop Fund is to be used to compensate counsel for Participating Local Governments that filed opioid lawsuits by September 1, 2020 ("Litigating Participating Local Governments"). Payments out of the Backstop Fund shall be determined by a committee consisting of one representative from each of the Litigating Participating Local Governments (the "Opioid Fee and Expense Committee").
5. The Backstop Fund shall be funded as follows: From any national Settlement, the funds to be deposited in the Backstop Fund shall be 14.25% of the LG Share of each payment (annual or otherwise) to the State of Arizona for that Settlement. No portion of the State Share shall be used for the Backstop Fund or in any other way to fund any Participating Local Government's attorney's fees and costs.
6. The maximum percentage of any contingency fee agreement permitted for compensation shall be 25% of the portion of the LG Share attributable to the Litigating Participating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Participating Local Government. Under no circumstances may counsel collect more for its work on behalf of a Litigating Participating Local Government than it would under its contingency agreement with that Litigating Participating Local Government.
7. Any funds remaining in the Backstop Fund in excess of the amounts needed to cover private counsels' representation agreements shall revert to the Participating Local Governments according to the percentages set forth in Exhibits B and C, to be used for Approved Purposes as set forth herein and in Exhibit A.

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<sup>2</sup> This paragraph shall not apply to any Settlement with distributors McKesson, Amerisource Bergen, and Cardinal Health or manufacturer Johnson & Johnson.

## **F. Compliance Reporting and Accountability**

1. The Trustee shall provide an up-to-date accounting of payments into or out of the trust and/or its subaccounts upon written request of the State or a Participating Local Government.
2. The State, Regions, and Participating Local Governments may object to an allocation or expenditure of Opioid Funds solely on the basis that the allocation or expenditure at issue (1) is inconsistent with provision C(1) hereof with respect to the amount of the State Share or LG Share; (2) is inconsistent with an agreed-upon allocation, or the default allocations in Exhibits B and C, as contemplated by Section C(3); or (3) violates the limitations set forth in F(3) with respect to compensation of the Trustee. The objector shall have the right to bring that objection within two years of the date of its discovery to a superior court in Maricopa County, Arizona.
3. Out of the Opioid Funds, reasonable expenses up to 0.005% shall be paid to the Trustee.
4. The Parties shall maintain, for a period of at least five years, records of abatement expenditures and documents underlying those expenditures, so that it can be verified that funds are being or have been utilized in a manner consistent with the Approved Purposes definition.
5. At least annually, each Region or Multicounty Region shall provide to the State a report detailing for the preceding time period (1) the amount of the LG Share received by each Participating Local Government within the Region or Multicounty Region, (2) the allocation of any awards approved (listing the recipient, the amount awarded, the program to be funded, and disbursement terms), and (3) the amounts disbursed on approved allocations. In order to facilitate this reporting, each Participating Local Government within a Region or Multicounty Region shall provide information necessary to meet these reporting obligations to a delegate(s) selected by the Region or Multicounty Region to provide its annual report to the State.
6. At least annually, the State shall publish on its website a report detailing for the preceding time period (1) the amount of the State Share received, (2) the allocation of any awards approved (listing the recipient, the amount awarded, the program to be funded, and disbursement terms), and (3) the amounts disbursed on approved allocations. In addition, the State shall publish on its website the reports described in F(5) above.
7. If it appears to the State, a Region, or a Multicounty Region that the State or another Region or Multicounty Region is using or has used Settlement funds for non-Approved Purposes, the State, Region, or Multicounty Region may on written request seek and obtain the documentation underlying the report(s) described in F(5) or F(6), as applicable, including documentation described in F(4). The State, Region, or Multicounty Region receiving such request shall have 14 days to provide the requested information. The requesting party and the State, Region, or Multicounty Region receiving such request may extend the time period for compliance with the request only upon mutual agreement.

8. Following a request made pursuant to F(7) and when it appears that LG Share funds are being or have been spent on non-Approved Purposes, the State may seek and obtain in an action in a court of competent jurisdiction in Maricopa County, Arizona an injunction prohibiting the Region or Multicounty Region from spending LG Share funds on non-Approved Purposes and requiring the Region or Multicounty Region to return the monies that it spent on non-Approved Purposes after notice as is required by the rules of civil procedure. So long as the action is pending, distribution of LG Share funds to the Region or Multicounty Region temporarily will be suspended. Once the action is resolved, the suspended payments will resume, less any amounts that were ordered returned but have not been returned by the time the action is resolved.
9. Following a request made pursuant to F(7) and when it appears to at least eight Participating Counties that have signed on to this MOU and a subsequent Settlement that the State Share funds are being or have been spent on non-Approved Purposes, the Participating Counties may seek and obtain in an action in a superior court of Maricopa County, Arizona an injunction prohibiting the State from spending State Share funds on non-Approved Purposes and requiring the State to return the monies it spent on non-Approved Purposes after notice as is required by the rules of civil procedure. So long as the action is pending, distribution of State Share funds to the State temporarily will be suspended. Once the action is resolved, the suspended payments will resume, less any monies that were ordered returned but have not been returned by the time the action is resolved.
10. In an action brought pursuant to F(8) or F(9), attorney's fees and costs shall not be recoverable.

#### **F. Settlement Negotiations**

1. The State and the Participating Local Governments agree to inform each other in advance of any negotiations relating to an Arizona-only settlement with a Pharmaceutical Supply Chain Participant that includes both the State and the Participating Local Governments and shall provide each other the opportunity to participate in all such negotiations.
2. The State and the Participating Local Governments further agree to keep each other reasonably informed of all other global settlement negotiations with Pharmaceutical Supply Chain Participants. Neither this provision, nor any other, shall be construed to state or imply that either the State or the Participating Local Governments (collectively, the "Arizona Parties") are unauthorized to engage in settlement negotiations with Pharmaceutical Supply Chain Participants without prior consent or contemporaneous participation of the other, or that either party is entitled to participate as an active or direct participant in settlement negotiations with the other. Rather, while the State's and the Participating Local Government's efforts to achieve worthwhile settlements are to be collaborative, incremental stages need not be so.
3. The State or any Participating Local Government may withdraw from coordinated Settlement discussions detailed in this Section upon 10 business days' written notice to the other Arizona Parties and counsel for any affected Pharmaceutical Supply Chain

Participant. The withdrawal of any Arizona Party releases the remaining Arizona Parties from the restrictions and obligations in this Section.

4. The obligations in this Section shall not affect any Party's right to proceed with trial or, within 30 days of the date upon which a trial involving that Party's claims against a specific Pharmaceutical Supply Chain Participant is scheduled to begin, reach a case-specific resolution with that particular Pharmaceutical Supply Chain Participant.

#### **G. Amendments**

1. The Parties agree to make such amendments as necessary to implement the intent of this agreement.

ACCEPTED by the undersigned and executed this 16 day of October, 2020.

ARIZONA ATTORNEY GENERAL

  
Mark Brnovich

APACHE COUNTY

\_\_\_\_\_  
Michael B. Whiting

COCHISE COUNTY

\_\_\_\_\_  
Brian McIntyre

COCONINO COUNTY

\_\_\_\_\_  
William P. Ring

GILA COUNTY

\_\_\_\_\_  
Bradley B. Beauchamp

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ACCEPTED by the undersigned and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ARIZONA ATTORNEY GENERAL

\_\_\_\_\_  
Mark Brnovich

APACHE COUNTY

\_\_\_\_\_  
Michael B. Whiting

COCHISE COUNTY

\_\_\_\_\_  
Brian McIntyre

COCONINO COUNTY

\_\_\_\_\_  
Elizabeth C. Archuleta, Chair

GILA COUNTY

\_\_\_\_\_  
Bradley B. Beauchamp

Bradley B. Beauchamp

GRAHAM COUNTY

  
Kenny Angle


GREENLEE COUNTY

  
Jeremy Ford

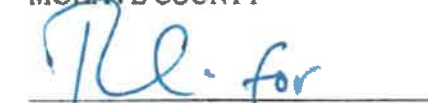
LA PAZ COUNTY

  
Tony Rogers

MARICOPA COUNTY

  
Allister Adel

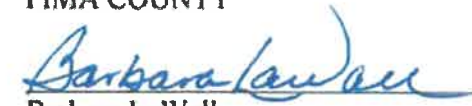
MOHAVE COUNTY

  
Matthew J. Smith

NAVAJO COUNTY

  
Brad Carlyon

PIMA COUNTY

  
Barbara LaWall

PINAL COUNTY

  
Kent Volkmer

SANTA CRUZ COUNTY

  
George Silva

YAVAPAI COUNTY

  
Sheila Polk

YUMA COUNTY

  
Jean R. Smith

## MARICOPA COUNTY CITIES & TOWNS

MESA CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SURPRISE CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

PARADISE VALLEY TOWN

By: \_\_\_\_\_  
Its: \_\_\_\_\_

TEMPE CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

PEORIA CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

TOLLESON CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

PHOENIX CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

WICKENBURG TOWN

By: \_\_\_\_\_  
Its: \_\_\_\_\_

QUEEN CREEK TOWN

By: \_\_\_\_\_  
Its: \_\_\_\_\_

YOUNGTOWN TOWN

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SCOTTSDALE CITY

By: \_\_\_\_\_  
Its: \_\_\_\_\_



# Exhibit A

## OPIOD ABATEMENT STRATEGIES

### PART ONE: TREATMENT

#### A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.
2. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to:
  - a. Medication-Assisted Treatment (MAT);
  - b. Abstinence-based treatment;
  - c. Treatment, recovery, or other services provided by states, subdivisions, community health centers; non-for-profit providers; or for-profit providers;
  - d. Treatment by providers that focus on OUD treatment as well as treatment by providers that offer OUD treatment along with treatment for other SUD/MH conditions, co-usage, and/or co-addiction; or
  - e. Evidence-informed residential services programs, as noted below.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based, evidence-informed, or promising practices such as adequate methadone dosing.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction and for persons who have experienced an opioid overdose.
6. Support treatment of mental health trauma resulting from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose).

or overdose fatality), and training of health care personnel to identify and address such trauma.

7. Support detoxification (detox) and withdrawal management services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including medical detox, referral to treatment, or connections to other services or supports.
8. Support training on MAT for health care providers, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Provide fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
12. Support the dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.
13. Support the development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

## **B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY**

Support people in treatment for and recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Provide the full continuum of care of recovery services for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.
2. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

3. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, recovery housing, housing assistance programs, or training for housing providers.
4. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
5. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
6. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
7. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
8. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to manage the opioid user in the family.
9. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.
10. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED  
(CONNECTIONS TO CARE)**

Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Support Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Support training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
6. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or persons who have experienced an opioid overdose, into community treatment or recovery services through a bridge clinic or similar approach.
7. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or persons that have experienced an opioid overdose.
8. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
9. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings: offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced an opioid overdose.
10. Provide funding for peer navigators, recovery coaches, care coordinators, or care managers that offer assistance to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced on opioid overdose.
11. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
12. Develop and support best practices on addressing OUD in the workplace.
13. Support assistance programs for health care providers with OUD.
14. Engage non-profits and the faith community as a system to support outreach for treatment.
15. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
16. Create or support intake and call centers to facilitate education and access to treatment, prevention, and recovery services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

17. Develop or support a National Treatment Availability Clearinghouse – a multistate/nationally accessible database whereby health care providers can list locations for currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis by persons who seek treatment.

**D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS**

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or post-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including established strategies such as:
  - a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);
  - b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;
  - c. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
  - d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;
  - e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative;
  - f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise and to reduce perceived barriers associated with law enforcement 911 responses; or
  - g. County prosecution diversion programs, including diversion officer salary, only for counties with a population of 50,000 or less. Any diversion services in matters involving opioids must include drug testing, monitoring, or treatment.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, but only if these courts provide referrals to evidence-informed treatment, including MAT.

4. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are leaving jail or prison have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, case management, or other services offered in connection with any of the strategies described in this section.

**E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME**

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based, evidence-informed, or promising treatment, including MAT, recovery services and supports, and prevention services for pregnant women – or women who could become pregnant – who have OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Provide training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
3. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.
4. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

5. Offer enhanced family supports and home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to parent skills training.
6. Support for Children's Services – Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

<p><b>PART TWO: PREVENTION</b></p>
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**F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS**

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
2. Academic counter-detailing to educate prescribers on appropriate opioid prescribing.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PDMPs), including but not limited to improvements that:
  - a. Increase the number of prescribers using PDMPs;
  - b. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs or by improving the interface that prescribers use to access PDMP data, or both; or
  - c. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD.
6. Development and implementation of a national PDMP – Fund development of a multistate/national PDMP that permits information sharing while providing appropriate safeguards on sharing of private health information, including but not limited to:
  - a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.



- b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database.
- 7. Increase electronic prescribing to prevent diversion or forgery.
- 8. Educate Dispensers on appropriate opioid dispensing.

**G. PREVENT MISUSE OF OPIOIDS**

Support efforts to discourage or prevent misuse of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

- 1. Corrective advertising or affirmative public education campaigns based on evidence.
- 2. Public education relating to drug disposal.
- 3. Drug take-back disposal or destruction programs.
- 4. Fund community anti-drug coalitions that engage in drug prevention efforts.
- 5. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).
- 6. Engage non-profits and faith-based communities as systems to support prevention.
- 7. Support evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
- 8. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
- 9. Support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
- 10. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
- 11. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses or other school staff, to

address mental health needs in young people that (when not properly addressed) increase the risk of opioid or other drug misuse.

#### **H. PREVENT OVERDOSE DEATHS AND OTHER HARMS**

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, or other members of the general public.
2. Provision by public health entities of free naloxone to anyone in the community, including but not limited to provision of intra-nasal naloxone in settings where other options are not available or allowed.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.
4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
10. Support mobile units that offer or provide referrals to treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
11. Provide training in treatment and recovery strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
12. Support screening for fentanyl in routine clinical toxicology testing.

## PART THREE: OTHER STRATEGIES

### **I. FIRST RESPONDERS**

In addition to items C8, D1 through D7, H1, H3, and H8, support the following:

1. Current and future law enforcement expenditures relating to the opioid epidemic.
2. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

### **J. LEADERSHIP, PLANNING AND COORDINATION**

Support efforts to provide leadership, planning, and coordination to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Community regional planning to identify goals for reducing harms related to the opioid epidemic, to identify areas and populations with the greatest needs for treatment intervention services, or to support other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

### **K. TRAINING**

In addition to the training referred to in various items above, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Invest in infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or implement other

strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.).

**L. RESEARCH**

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
5. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).
6. Research on expanded modalities such as prescription methadone that can expand access to MAT.

# Exhibit B

**Exhibit B****Allocation to Arizona Counties/Regions**

County/Region	Percentage of LG Share
APACHE	0.690%
COCHISE	1.855%
COCONINO	1.688%
GILA	1.142%
GRAHAM	0.719%
GREENLEE	0.090%
LA PAZ	0.301%
MARICOPA	57.930%
MOHAVE	4.898%
NAVAJO	1.535%
PIMA	18.647%
PINAL	3.836%
SANTA CRUZ	0.370%
YAVAPAI	4.291%
YUMA	2.008%

# Exhibit C

**Exhibit C**

Government Name	County Name	State Name	Government Type	Census ID	Intra-county Allocation (%) Based on Past Spending
<b>APACHE COUNTY</b>					
APACHE COUNTY	Apache County	ARIZONA	County	3100100100000	56.63%
EAGAR TOWN	Apache County	ARIZONA	City	3200100100000	20.66%
SPRINGERVILLE TOWN	Apache County	ARIZONA	City	3200100300000	10.73%
ST JOHNS CITY	Apache County	ARIZONA	City	3200100200000	11.98%
<b>COCHISE COUNTY</b>					
COCHISE COUNTY	Cochise County	ARIZONA	County	3100200200000	63.47%
BENSON CITY	Cochise County	ARIZONA	City	3200200100000	3.52%
BISBEE CITY	Cochise County	ARIZONA	City	3200200200000	3.47%
DOUGLAS CITY	Cochise County	ARIZONA	City	3200200300000	8.44%
HUACHUCA CITY TOWN	Cochise County	ARIZONA	City	3200250100000	0.91%
SIERRA VISTA CITY	Cochise County	ARIZONA	City	3200200400000	16.63%
TOMBSTONE CITY	Cochise County	ARIZONA	City	3200200500000	1.16%
WILLCOX CITY	Cochise County	ARIZONA	City	3200200600000	2.39%
<b>COCONINO COUNTY</b>					
COCONINO COUNTY	Coconino County	ARIZONA	County	3100300300000	71.16%
FLAGSTAFF CITY	Coconino County	ARIZONA	City	3200300100000	18.45%
FREDONIA TOWN	Coconino County	ARIZONA	City	3200300300000	0.31%
PAGE CITY	Coconino County	ARIZONA	City	3200390100000	3.41%
SEDONA CITY	Coconino County	ARIZONA	City	3201340200000	4.09%
TUSAYAN TOWN	Coconino County	ARIZONA	City	3200310100000	0.67%
WILLIAMS CITY	Coconino County	ARIZONA	City	3200300200000	1.92%
<b>GILA COUNTY</b>					
GILA COUNTY	Gila County	ARIZONA	County	3100400400000	68.13%
GLOBE CITY	Gila County	ARIZONA	City	3200400100000	10.23%
HAYDEN TOWN	Gila County	ARIZONA	City	3200450100000	2.31%
MIAMI TOWN	Gila County	ARIZONA	City	3200400200000	2.71%
PAYSON TOWN	Gila County	ARIZONA	City	3200490100000	16.17%
STAR VALLEY TOWN	Gila County	ARIZONA	City	3200410100000	0.35%
WINKELMAN TOWN	Gila County	ARIZONA	City	3200400300000	0.10%
<b>GRAHAM COUNTY</b>					
GRAHAM COUNTY	Graham County	ARIZONA	County	3100500500000	62.26%
PIMA TOWN	Graham County	ARIZONA	City	3200500100000	2.22%



SAFFORD CITY	Graham County	ARIZONA	City	3200500200000	26.83%
THATCHER TOWN	Graham County	ARIZONA	City	3200500300000	8.68%
<b>GREENLEE COUNTY</b>					
GREENLEE COUNTY	Greenlee County	ARIZONA	County	3100600600000	88.29%
CLIFTON TOWN	Greenlee County	ARIZONA	City	3200600100000	11.43%
DUNCAN TOWN	Greenlee County	ARIZONA	City	3200600200000	0.28%
<b>LA PAZ COUNTY</b>					
LA PAZ COUNTY	La Paz County	ARIZONA	County	3101501500000	88.71%
PARKER TOWN	La Paz County	ARIZONA	City	3201560100000	5.19%
QUARTZSITE TOWN	La Paz County	ARIZONA	City	3201540100000	6.11%
<b>MARICOPA COUNTY</b>					
MARICOPA COUNTY	Maricopa County	ARIZONA	County	3100700700000	51.53%
APACHE JUNCTION CITY	Maricopa County	ARIZONA	City	3201160100000	0.38%
AVONDALE CITY	Maricopa County	ARIZONA	City	3200700100000	0.98%
BUCKEYE TOWN	Maricopa County	ARIZONA	City	3200700200000	0.46%
CAREFREE TOWN	Maricopa County	ARIZONA	City	3200740100000	0.04%
CAVE CREEK TOWN	Maricopa County	ARIZONA	City	3200740200000	0.06%
CHANDLER CITY	Maricopa County	ARIZONA	City	3200700300000	2.86%
EL MIRAGE CITY	Maricopa County	ARIZONA	City	3200700400000	0.39%
FOUNTAIN HILLS TOWN	Maricopa County	ARIZONA	City	3200740400000	0.17%
GILA BEND TOWN	Maricopa County	ARIZONA	City	3200770100000	0.03%
GILBERT TOWN	Maricopa County	ARIZONA	City	3200700500000	1.71%
GLENDALE CITY	Maricopa County	ARIZONA	City	3200700600000	2.63%
GOODYEAR CITY	Maricopa County	ARIZONA	City	3200700700000	0.76%
GUADALUPE TOWN	Maricopa County	ARIZONA	City	3200790100000	0.00%
LITCHFIELD PARK CITY	Maricopa County	ARIZONA	City	3200740300000	0.04%
MESA CITY	Maricopa County	ARIZONA	City	3200700800000	6.06%
PARADISE VALLEY TOWN	Maricopa County	ARIZONA	City	3200750100000	0.34%
PEORIA CITY	Maricopa County	ARIZONA	City	3200700900000	1.51%
PHOENIX CITY	Maricopa County	ARIZONA	City	3200701000000	21.28%
QUEEN CREEK TOWN	Maricopa County	ARIZONA	City	3200740500000	0.11%
SCOTTSDALE CITY	Maricopa County	ARIZONA	City	3200701100000	3.99%
SURPRISE CITY	Maricopa County	ARIZONA	City	3200750200000	0.98%
TEMPE CITY	Maricopa County	ARIZONA	City	3200701200000	3.27%
TOLLESON CITY	Maricopa County	ARIZONA	City	3200701300000	0.27%
WICKENBURG TOWN	Maricopa County	ARIZONA	City	3200701400000	0.10%

YOUNGTOWN TOWN	Maricopa County	ARIZONA	City	3200750300000	0.05%
<b>MOHAVE COUNTY</b>					
MOHAVE COUNTY	Mohave County	ARIZONA	County	3100800800000	62.51%
BULLHEAD CITY CITY	Mohave County	ARIZONA	City	3200840100000	13.10%
COLORADO CITY TOWN	Mohave County	ARIZONA	City	3200840200000	0.61%
KINGMAN CITY	Mohave County	ARIZONA	City	3200800100000	9.91%
LAKE HAVASU CITY CITY	Mohave County	ARIZONA	City	3200860100000	13.87%
<b>NAVAJO COUNTY</b>					
NAVAJO COUNTY	Navajo County	ARIZONA	County	3100900900000	70.29%
HOLBROOK CITY	Navajo County	ARIZONA	City	3200900100000	3.75%
PINETOP-LAKESIDE TOWN	Navajo County	ARIZONA	City	3200940100000	4.75%
SHOW LOW CITY	Navajo County	ARIZONA	City	3200900200000	9.39%
SNOWFLAKE TOWN	Navajo County	ARIZONA	City	3200900300000	2.94%
TAYLOR TOWN	Navajo County	ARIZONA	City	3200980100000	2.68%
WINSLOW CITY	Navajo County	ARIZONA	City	3200900400000	6.19%
<b>PIMA COUNTY</b>					
PIMA COUNTY	Pima County	ARIZONA	County	3101001000000	72.19%
MARANA TOWN	Pima County	ARIZONA	City	3201090200000	2.06%
ORO VALLEY TOWN	Pima County	ARIZONA	City	3201090100000	1.72%
SAHUARITA TOWN	Pima County	ARIZONA	City	3201020100000	0.81%
SOUTH TUCSON CITY	Pima County	ARIZONA	City	3201000100000	0.31%
TUCSON CITY	Pima County	ARIZONA	City	3201000200000	22.91%
<b>PINAL COUNTY</b>					
PINAL COUNTY	Pinal County	ARIZONA	County	3101101100000	53.01%
CASA GRANDE CITY	Pinal County	ARIZONA	City	3201100100000	5.54%
COOLIDGE CITY	Pinal County	ARIZONA	City	3201100200000	1.68%
ELOY CITY	Pinal County	ARIZONA	City	3201100300000	34.98%
FLORENCE TOWN	Pinal County	ARIZONA	City	3201100400000	1.19%
KEARNY TOWN	Pinal County	ARIZONA	City	3201150100000	0.28%
MAMMOTH TOWN	Pinal County	ARIZONA	City	3201150200000	0.16%
MARICOPA CITY	Pinal County	ARIZONA	City	3201110100000	2.73%
SUPERIOR TOWN	Pinal County	ARIZONA	City	3201190100000	0.44%
<b>SANTA CRUZ COUNTY</b>					
SANTA CRUZ COUNTY	Santa Cruz County	ARIZONA	County	3101201200000	76.78%
NOGALES CITY	Santa Cruz County	ARIZONA	City	3201200100000	22.55%
PATAGONIA TOWN	Santa Cruz County	ARIZONA	City	3201200200000	0.67%

YAVAPAI COUNTY					
YAVAPAI COUNTY	Yavapai County	ARIZONA	County	3101301300000	69.31%
CAMP VERDE TOWN	Yavapai County	ARIZONA	City	3201340100000	0.97%
CHINO VALLEY TOWN	Yavapai County	ARIZONA	City	3201380100000	0.68%
CLARKDALE TOWN	Yavapai County	ARIZONA	City	3201350100000	0.72%
COTTONWOOD CITY	Yavapai County	ARIZONA	City	3201350200000	4.89%
DEWEY-HUMBOLDT TOWN	Yavapai County	ARIZONA	City	3201310100000	1.54%
JEROME TOWN	Yavapai County	ARIZONA	City	3201300100000	0.03%
PRESCOTT CITY	Yavapai County	ARIZONA	City	3201300200000	13.79%
PRESCOTT VALLEY TOWN	Yavapai County	ARIZONA	City	3201360100000	8.09%
YUMA COUNTY					
YUMA COUNTY	Yuma County	ARIZONA	County	3101401400000	66.03%
SAN LUIS CITY	Yuma County	ARIZONA	City	3201460100000	4.80%
SOMERTON CITY	Yuma County	ARIZONA	City	3201400200000	2.24%
WELLTON TOWN	Yuma County	ARIZONA	City	3201480100000	0.61%
YUMA CITY	Yuma County	ARIZONA	City	3201400300000	26.32%

# Exhibit D

Exhibit D	
Percent Participation of Cities	Award
0	0%
5	2%
10	4%
15	6%
20	8%
25	10%
30	12%
35	14%
40	16%
45	18%
50	20%
55	22%
60	24%
65	26%
70	28%
75	30%
80	32%
85	34%
90	36%
95	38%
100	40%

GOVERNMENT	TYPE	HEALTH	TREATMENT	EDUCATION	POLICING	LOST TAX	TOTALS	PERCENT
APACHE JUNCTION	City	\$268,405	\$0	\$0	\$7,771,591	\$2,159,540	\$10,199,536	0.38%
AVONDALE	City	\$639,202	\$0	\$0	\$19,096,366	\$6,847,678	\$26,583,246	0.98%
BUCKEYE	Town	\$926,349	\$0	\$0	\$8,262,924	\$3,168,070	\$12,357,343	0.46%
CAREFREE	Town	\$125,321	\$0	\$0	\$240,543	\$641,665	\$1,007,528	0.04%
CAVE CREEK	Town	\$18,798	\$0	\$0	\$535,911	\$1,004,145	\$1,558,855	0.06%
CHANDLER	City	\$3,919,531	\$0	\$0	\$51,306,698	\$22,377,757	\$77,603,986	2.86%
EL MIRAGE	City	\$657,372	\$212,322	\$0	\$8,344,033	\$1,235,902	\$10,449,629	0.39%
FOUNTAIN HILLS	Town	\$334,863	\$0	\$0	\$2,536,379	\$1,617,912	\$4,489,153	0.17%
GILA BEND	Town	\$59,004	\$9,938	\$0	\$442,088	\$188,115	\$699,146	0.03%
GILBERT	Town	\$2,813,856	\$0	\$0	\$32,064,420	\$11,351,686	\$46,229,962	1.71%
GLENDALE	City	\$5,293,340	\$0	\$0	\$46,198,522	\$19,906,352	\$71,398,214	2.63%
GOODYEAR	City	\$1,310,182	\$0	\$0	\$11,592,603	\$7,737,041	\$20,639,826	0.76%
GUADALUPE	Town	\$0	\$0	\$0	\$0	\$64,565	\$64,565	0.00%
LITCHFIELD PARK	City	\$17,020	\$0	\$0	\$508,473	\$688,295	\$1,213,788	0.04%
MARICOPA COUNTY	County	\$99,844,793	\$43,569,929	\$752,884	\$1,228,048,106	\$24,559,616	\$1,396,775,327	51.53%
MESA	City	\$9,476,029	\$0	\$0	\$129,135,942	\$25,681,135	\$164,293,106	6.06%
PARADISE VALLEY	Town	\$411,951	\$0	\$0	\$6,471,550	\$2,327,928	\$9,211,428	0.34%
PEORIA	City	\$2,324,049	\$0	\$0	\$25,967,737	\$12,650,559	\$40,942,345	1.51%
PHOENIX	City	\$36,481,606	\$0	\$561,638	\$398,316,302	\$141,575,741	\$576,935,286	21.28%
QUEEN CREEK	Town	\$451,953	\$4,969	\$0	\$192,210	\$2,435,137	\$3,084,270	0.11%
SCOTTSDALE	City	\$4,639,240	\$0	\$0	\$71,050,198	\$32,483,179	\$108,172,617	3.99%
SURPRISE	City	\$1,508,737	\$0	\$0	\$19,338,848	\$5,807,663	\$26,655,248	0.98%
TEMPE	City	\$4,197,280	\$0	\$0	\$55,339,027	\$29,176,613	\$88,712,920	3.27%
TOLLESON	City	\$403,493	\$0	\$0	\$3,912,297	\$3,065,045	\$7,380,835	0.27%
WICKENBURG	Town	\$147,816	\$0	\$0	\$2,066,757	\$534,056	\$2,748,629	0.10%
YOUNGTOWN	Town	\$36,858	\$0	\$0	\$1,048,336	\$161,413	\$1,246,606	0.05%
<b>TOTALS</b>		<b>\$176,307,044</b>	<b>\$43,797,159</b>	<b>\$1,314,523</b>	<b>\$2,129,787,860</b>	<b>\$359,446,808</b>	<b>\$2,710,653,394</b>	<b>100.00%</b>



# One Arizona Opioid Settlement Memorandum of Understanding

## ***Overview***

November 10, 2020

## Agenda

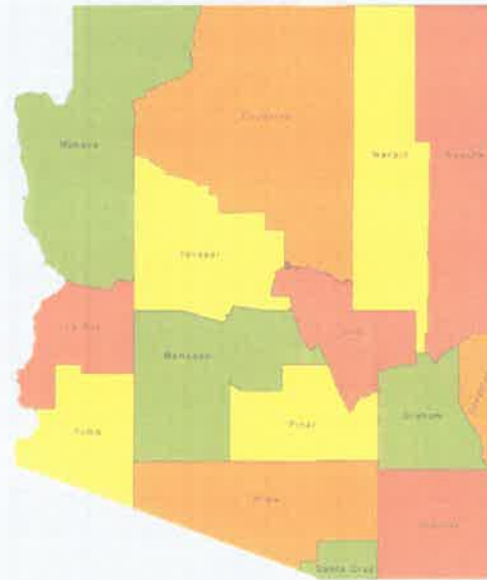
- Welcome & Introductions
- In Arizona, we are joining forces
- Overview of the One Arizona Opioid Settlement Memorandum of Understanding (the “One Arizona Plan”)
- Discussion of key deal points



## Arizona Entities Have Joined Together

- All 15 counties and the State have signed on to the One Arizona Plan

- |            |              |
|------------|--------------|
| ✓ Apache   | ✓ Navajo     |
| ✓ Cochise  | ✓ Pima       |
| ✓ Coconino | ✓ Pinal      |
| ✓ Gila     | ✓ Santa Cruz |
| ✓ Graham   | ✓ Yavapai    |
| ✓ Greenlee | ✓ Yuma       |
| ✓ La Paz   |              |
| ✓ Maricopa |              |
| ✓ Mohave   |              |

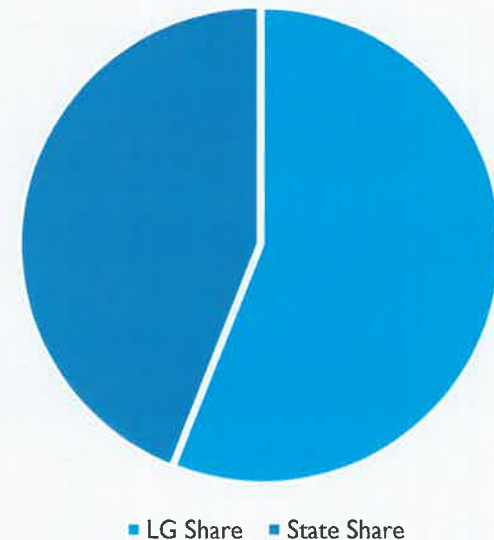


To maximize recovery for ALL  
Arizonans, Arizona needs **100%**  
**participation** of state, counties,  
cities, and towns

## The One Arizona Plan

- Opioid Settlement fund allocation:
  - **Most favorable plan to local governments in the country**
  - Treats litigating and non-litigating entities the same.
  - **56% to Participating Local Governments (“LG Share”)**
    - Money flows **directly to participating counties, cities, and towns**
  - **44% to State of Arizona (“State Share”)**
    - Up to 30% of the State Share will be used for opioid education and awareness, abatement on the Southern border and prison/jail opioid costs
- Not like the 1998 tobacco settlement: All opioid funds shall be used *only* for “Approved Purposes”

Settlement Distribution



## How City/County Allocation Works

- The LG Share is allocated among the 15 counties (and the cities and towns within them).
- This allocation uses three equally weighted factors: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county.
- Allocation between the counties and the cities and towns within the county is based on past spending related to opioids.
- The LG Share is to be paid directly to the Participating Local Governments through a Trustee.
- To maximize recovery for all Arizonans, Arizona needs 100% participation of the counties, cities, and towns.

## Next Steps

1. Obtain a signature from your Mayor or City Attorney on the One Arizona Plan by December 15, 2020 at 5:00pm.
2. Send the signed copy to Matthew du Mee ([Matthew.duMee@azag.gov](mailto:Matthew.duMee@azag.gov)) and Jennifer Bonham ([Jennifer.Bonham@azag.gov](mailto:Jennifer.Bonham@azag.gov)).
3. Please let Keller Rohrback know you've signed by sending an email to Arden Wilson ([AWilson@kellerrohrback.com](mailto:AWilson@kellerrohrback.com)).

We welcome your  
questions

Please reach out to  
[opioids@kellerrohrback.com](mailto:opioids@kellerrohrback.com)

## ORDINANCE NO. 2020-04

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF YOUNGTOWN, ARIZONA, DECLARING THE DOCUMENT ENTITLED “TOWN OF YOUNGTOWN TELECOMMUNICATIONS SERVICES – WIRED FACILITIES IN THE PUBLIC HIGHWAY” DATED DECEMBER 3, 2020 AS A PUBLIC RECORD; ADOPTING THE “TOWN OF YOUNGTOWN TELECOMMUNICATIONS SERVICES – WIRED FACILITIES IN THE PUBLIC HIGHWAY” DATED DECEMBER 3, 2020 BY REFERENCE; ADDING NEW TITLE 22 TELECOMMUNICATIONS SERVICES – WIRED FACILITIES IN THE PUBLIC HIGHWAY RELATED TO THE USE OF PUBLIC HIGHWAYS BY TELECOMMUNICATIONS PROVIDERS LOCATING WIRED FACILITIES IN THE PUBLIC HIGHWAYS IN THE TOWN AND THE REGULATION THEREOF; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, the Town of Youngtown, in its governmental capacity, owns or holds a legal interest in public roads, streets and alleys and all other dedicated public rights-of-way, Town and the Town is responsible for the management of the rights-of-way within Town’s boundaries. Pursuant to ARS §§ 9-240, 9-276 and 9-582, the Town has exclusive control of the right-of-way.

WHEREAS, as authorized by ARS § 9-583, *et seq.*, telecommunications providers may use the public rights-of-way in compliance with public highway use requirements.

WHEREAS, the primary purpose of this ordinance is to protect the health, safety, and welfare for the public, and to protect the value of and physical integrity of publicly-owned property and assets, while treating telecommunications providers who install wired facilities in the public highway in a competitively neutral and non-discriminatory manner.

WHEREAS, the document entitled “Town of Youngtown Telecommunications Services – Wired Facilities in the Public Highway” dated December 3, 2020, three copies of which are on file in the office of the Town Clerk, are hereby declared a public record.

**NOW THEREFORE, BE IT ORDAINED** by the Common Council of the Town of Youngtown, Arizona, as follows:

### Section I. In General.

1. That certain document entitled “Town of Youngtown Telecommunications Services – Wired Facilities in the Public Highway” dated December 3, 2020, three copies of which are on file in the Town Clerk’s office, is hereby declared to be a public record.

2. That document entitled “Town of Youngtown Telecommunications Services – Wired Facilities in the Public Highway” dated December 3, 2020 is hereby adopted by reference as regulations for wired telecommunications facilities in the public highways in the Town.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be responsible for a civil infraction, punishable by a fine not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each violation. Each day that a violation continues shall be a separate offense punishable as hereinabove described. After having been found responsible for committing three (3) or more civil infractions of the same code provision in any twenty-four (24) month period, a person is a habitual offender and may be charged with a class one misdemeanor, punishable by a fine of not less than five hundred dollars (\$500) nor more than twenty-five hundred dollars (\$2,500), imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment.

**PASSED AND ADOPTED** by the Common Council of the Town of Youngtown, Arizona, this 3rd day of December, 2020.

---

Michael LeVault, Mayor

**ATTEST:**

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Nicole Smart, Town Clerk



**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gust Rosenfeld, PLC, Town Attorney

By: Trish Stuhan

I, \_\_\_\_\_, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. \_\_\_\_\_ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF YOUNGTOWN ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020, WAS POSTED IN THREE PLACES ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
Nicole Smart, Town Clerk

TOWN OF YOUNGTOWN, ARIZONA TELECOMMUNICATIONS SERVICES LICENSE  
ISSUED TO \_\_\_\_\_

THIS LICENSE ("License") is issued this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the Town of Youngtown, Arizona ("Town"), an Arizona municipal corporation, to \_\_\_\_\_, a \_\_\_\_\_ ("Licensee"), (Town and Licensee are collectively the "Parties").

**RECITALS**

- A. Licensee has applied to the Town for permission to construct, install, operate, maintain and use the Public Highways in the Town in order to provide Telecommunications Services; and
- B. Licensee has obtained a Certificate of Convenience and Necessity from the Arizona Corporation Commission to provide services within Arizona and is a Telecommunications Corporation; and
- C. By the authority conferred by A.R.S. §§ 9-581 through 9-583, the Town is authorized to grant this License; and
- D. Licensee has agreed to comply with the terms and conditions of the Youngtown Town Code Title 22 related to telecommunications licenses and Chapter 12.04 related to construction in the rights-of-way in the Town; and
- E. The Town Council is authorized to execute a license with Licensee to construct, install, operate, maintain and use Facilities under certain Public Highways within the Town to provide Telecommunications Services.

**AGREEMENT**

The Town grants Licensee a License on the following terms and conditions:

**SECTION 1. Definitions.**

For the purpose of this License, unless the context otherwise requires, the following terms, phrases, words, and their derivatives have these meanings. When not inconsistent with the context, words in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. If there is a conflict between these definitions and those listed in the Youngtown Town Code title 22 the definitions in the Youngtown Town Code Title 22 prevail and control.

"ACC" means the Arizona Corporation Commission.

*"Affiliate"* means an entity which now or in the future, owns or controls, is owned or controlled by, or is under common control or ownership with \_\_\_\_\_.

*"Annual Fee Payment"* means the fee set forth in Section 4.3.

*"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 Title 20 of the Youngtown Town Code.

*"Effective Date"* means the date in the introductory paragraph.

*"Town Council"* means the Council of the Town of Youngtown, Arizona.

*"Commercial Mobile Radio Services"* means two-way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 United States Code Section 157.

*"Dark Fiber"* means fiber optic strands that Licensee has laid or installed, but is not currently being used in fiber-optic communications.

*"Environmental Laws"* means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq. or the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq. or any other applicable federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements.

*"Facilities"* means the plant, equipment, and property used in the provision of telecommunications services and not owned by the Town, including but not limited to wires, pipes, conduits, pedestals, antennas, and other appurtenances placed under the public highways and not owned by the Town and used in the provision of telecommunication services. The term does not include wireless facilities as that term is defined in A.R.S. §9-591 or video services as defined in A.R.S. §9-1401.

*"FCC"* means the Federal Communications Commission.

*"Hazardous Substances"* means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

*"In-Kind Payments"* means facilities and/or services provided or to be provided by Licensee in lieu of all or a portion of the fees imposed by Town for the use of the Public Highway, as described in Exhibit C.

*"Interstate Telecommunications Services"* means Telecommunications Services provided between users in Arizona and users outside of Arizona.

*“License”* means this non-exclusive authorization granted by the Town to construct, operate, maintain, reconstruct, repair and remove the Facilities.

*“New Use Areas”* means areas in which the Facilities are expanded beyond the Use Areas after issuance of a permit by the Town Engineer pursuant to Section 5.6. After approval, New Use Areas may be referred to as Use Areas.

*“Proprietary Information”* shall have the meaning prescribed in Section 8.6.

*“Provider”* means a Telecommunications Corporation that constructs, installs, operates or maintains telecommunications facilities or interstate telecommunications services in the Highway.

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

*“System Route Map”* means the map showing the locations of the Facilities in the Use Areas pursuant to Section 2.2, as may be amended by Town Engineer approval of permits for New Use Areas.

*“Telecommunications”* means the transmission or the exchange of information by electronic and electrical means over a significant distance, between or among points specified by the provider or user. The term does not include commercial mobile radio services, pay phone services, wireless services, cable services or video 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.

*“Term”* mean the term of this Agreement as set forth in Section 10.

*“Use Areas”* means the initial locations of the Facilities as set forth on the System Route Map.

*“User Contracts”* means the contracts Licensee enters into with third parties to use the Facilities pursuant to Section 2.7.

*“Video Services”* and *“Video System”* shall have the same meaning as defined in A.R.S. §9-1401.

## SECTION 2. Permission Granted.

2.1 Subject to the terms of this License and to Title 22 of the Youngtown Town Code,

Arizona Revised Statutes and the Constitution of the State of Arizona, the Town grants to Licensee the nonexclusive revocable license, right and privilege to construct, install, operate, maintain and use Facilities under Public Highway to provide Telecommunications Services, within the current and future corporate Town limits of the Town. The permitted use is limited to (i) \_\_\_\_\_ [DESCRIBE – EG NUMBER OF LINEAR FEET OF WIRE, IN-KIND PAYMENTS, ANY ABOVE-GROUND FACILITIES].

- 2.2 The permission granted by this License is limited to the locations identified in the System Route Map attached to this License as Exhibit A as Use Areas. New Use Areas may be approved upon application for a permit pursuant to Chapter 12.04 of this code for such new use areas. The applications shall include specific information on the location of the new use areas and the proposed facilities. Upon approval by the Town Engineer, the new use areas shall be depicted on the system route map and shall be subject to all terms and conditions of the license and lawful conditions, if any, imposed by the Town.
- 2.3 Any and all rights granted to Licensee shall be subject to the prior and continuing right of Town to use the Public Highway, including the Use Areas. Any and all rights granted to Licensee shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect the Public Highway. Nothing in this License shall be construed to grant, convey, create or vest a perpetual real property interest in land to Licensee.
- 2.3.1 Licensee accepts the risk that there may now or in the future exist in the Use Areas other work and improvements that Town may approve from time to time. Town shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require Licensee to cooperate and participate in implementing such resolutions.
- 2.3.2 Neither Town nor any agent, contractor or employee of Town shall be liable to Licensee, its customers or third parties with User Contracts for any service disruption or for any other harm caused them or the Facilities due to competing uses of the Public Highway.
- 2.4 Licensee shall cause to comply with this License all persons using the Public Highway through or under Licensee or this License pursuant to Section 2.7. Licensee is responsible for any violations of this License by persons using the Public Highway through or under Licensee.
- 256 If it is necessary for the Licensee to comply with any law or regulation of the FCC or the ACC to engage in business activities associated with use of the Public Highway to provide Telecommunications Services, the Licensee shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this License.
- 2.6 To the extent that Licensee occupies the Public Highway solely with empty conduit and/or Dark Fiber and/or uses the Town's Public Highway to provide services other than

(a) the telecommunication services as defined by A.R.S. § 9-581, or (b) internet access, such use and/or occupation of the Public Highway is subject to the terms and conditions of this License and any applicable fees, permits and laws.

2.7 Licensee may enter into User Contracts with unrelated third parties in the ordinary course of Licensee's business for use of portions of the Facilities. User Contracts shall be subject to all requirements and provisions of this Agreement and the following:

2.7.1 No person shall transmit data over the Facilities or otherwise use the Facilities except under a User Contract with Licensee.

2.7.2 Such third parties shall not perform any construction maintenance, repair or other work of any description in the Use Areas related to the Facilities. All User Contracts shall prohibit such persons from performing any construction, maintenance, repair or other work of any description in the Use Areas related to the Facilities.

2.7.3 Within thirty (30) days after a notice of request by Town, Licensee shall deliver to Town a notice describing the User Contracts. The notice shall state the following: (i) the name of the third party, (ii) the name, title, address, telephone number, and email address of a person with authority to speak for the third party, (iii) the route of the proposed service, (iv) the street address within the Town, if any, where data under the User Contract will be introduced to or received from the Facilities, and (v) the duration of the User Contract and any extension rights.

2.8 All signage is prohibited except that Licensee shall install and thereafter maintain all signs and markings that the Facilities and Licensee's activities may make necessary for safe use of the Use Areas by the public, Town, Licensee and other persons who may be at the Use Areas at any time for any reason.

### SECTION 3. Reservation of Powers, Indemnification, Insurance.

3.1 The Parties agree if a regulatory body or a court of competent jurisdiction determines by a final, non-appealable order that the Town did not have the authority to issue this License under A.R.S. §§ 9-581 to 9-583, then this License will be considered a revocable permit with a mutual right in either Party to terminate without cause upon giving ninety (90) days written notice to the other Party. The requirements and conditions of such revocable permit will be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and the right of termination. If this License should be considered a revocable permit, the Licensee acknowledges the authority of the Town to issue and terminate revocable permits.

3.2 The Town reserves every right and power which is required to be reserved or is provided by any ordinance or the laws of the State of Arizona, and the Licensee, by its acceptance of this License, agrees to be bound thereby and to comply with any action or requirements of the Town in its exercise of such rights or power, whenever enacted or

established, except those actions or requirements which have been found to be unlawful under state or federal law. Neither the granting of this License, nor any of its provisions, constitute a waiver or bar to the exercise of any governmental right, privilege, immunity or power of the Town.

- 3.3 Any right or privilege claimed pursuant to this License by Licensee for any use of any Public Highway shall be subordinate to: any prior or subsequent lawful occupancy or use thereof by the Town or any other governmental entity; any prior lawful occupancy or use thereof by any other person; and to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.
- 3.4 Nothing in this License shall be construed to prevent the Town from abandoning, altering, improving, repairing, or maintaining its facilities and/or the Public Highway, and for that purpose to require Licensee, at no expense to the Town, to remove, relocate or abandon in place Licensee's Facilities in order to accommodate the activities of the Town. The Town shall not be liable for lost revenues sustained by Licensee, however caused, because of damage, modification, alteration, or destruction of Licensee's Facilities in the Public Highway, when such costs or lost revenues result from the construction, operation, and/or maintenance of Town facilities and/or the Public Highway, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.
- 3.5 Licensee acknowledges that it has liability for any and all of its Facilities installed in the Public Highway and for its use of the Public Highway and for its exercise of its rights under this License directly or through its contractor(s), except to the extent of intentional acts or gross negligence on the part of the Town. To the fullest extent permitted by law, Licensee, shall defend, indemnify and hold harmless the Town, or its officials, boards, commissions, agents or employees, individually and collectively, from and against any and all claims arising out of or alleged to have resulted from or materially related to the acts, errors, mistakes, omissions of Licensee, its employees, agents, or any tier of contractors or any other person for whose acts, errors, mistakes, or omissions Licensee 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 Licensee, its agent, employees or representatives to fulfill Licensee's obligations under this License, whether resolution of the above claim(s) proceeds to judgment or not. The provisions of this Section 3.5 shall survive cancellation, revocation, or termination of this License. This indemnification applies even if the Party seeking damages makes a claim against the Town or brings a claim against the Town based on vicarious liability or non-delegable duty.
- 3.6 Licensee shall comply with the insurance requirements attached to this License as Exhibit B attached hereto and incorporated herein by this reference.

#### SECTION 4. Fees.

- 4.1 The Town shall not levy any tax, rent, fee or charge on Licensee's activities conducted

under this License except for such taxes, rents, fees, or other charges as are applied by the Town on a nondiscriminatory basis to the use of the Public Highway for provision of Telecommunications Services under any lawful Town Code or Ordinance.

- 4.2 Licensee shall pay the following to the extent such charges are applied by the Town on a nondiscriminatory basis to use of the Public Highway for provision of Telecommunications Services by telecommunication corporations under any lawful Town Code or Ordinance:
- 4.2.1 Pay a transaction privilege tax authorized by law on the business of providing intrastate telecommunications services on the dates required by Arizona law.
  - 4.2.2 Pay a telecommunications license application fee for the issuance of a telecommunications license in compliance with A.R.S. § 9-582 as specified in Title 22 of this code. The application fee is Two Thousand Five Hundred and No/Dollars (\$2,500.00) and is payable to the Town within thirty (30) days of the Town's execution of this License.
  - 4.2.3 Pay an Annual Fee Payment in the amount set forth in Section 4.3 on each anniversary date of this Agreement for the prior year.
  - 4.2.4 Pay Public Highway construction permit fees established by the Town as they become due.
  - 4.2.5 Pay all reasonable costs associated with the construction, maintenance and operation of Licensee Facilities in the Public Highway, including reasonable costs associated with damage caused to the Public Highway in compliance with Chapter 12.04 of this code.
- 4.3 Annual Fee Payment. Licensee shall pay an Annual Fee Payment for that portion of the Facilities that provide interstate Telecommunications Services as defined in A.R.S. § 9-583(C)(2). Such payment shall be for that portion of the Facilities that carry interstate traffic between and among Licensee's interstate points of presence exclusive of that portion of the Facilities used by the local network and the portion of the interstate network that carries intrastate calls. The Annual Fee Payment shall be based on the number of linear feet of trench in the Public Highway. The annual fee is \$2.10 per linear foot, which shall be adjusted annually as provided in Town of Youngtown Resolution No. \_\_\_\_\_. The Annual Fee Payment shall be offset in accordance with the In-Kind Payment as set forth in Section 5.
- 4.4 Late Fees. Fee Payment is deemed paid only when Town actually receives good cash payment. Should any Fee Payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100), whichever is less. Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1.5%) per month from the date the amount first came due until paid. Licensee



expressly agrees that the foregoing represent fair and reasonable estimates by Town and Licensee of Town's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of Fee Payment. Town shall have the right to allocate payments received from Licensee among Licensee's obligations.

#### SECTION 5. In-Kind Fiber And Conduit; Offset To Annual Fee.

The Annual Fee Payment for the initial Use Areas shall be offset in its entirety for the duration of the Term by the value of In-Kind Payments as described on Exhibit C. Pursuant to A.R.S. § 9-582, Paragraph D, upon the expiration or termination of this Agreement, the In-Kind Payment shall become the property of Town, but Licensee shall have no responsibility whatsoever for any maintenance or operation of the In-Kind Payment.

#### SECTION 6. Letter of Credit.

Within ten (10) calendar days after the date of this Agreement, Licensee shall provide to Town a letter of credit as follows:

- 6.1 The amount of the letter of credit shall be Ten Thousand Dollars (\$10,000).
- 6.2 The letter of credit is an additional security deposit for Licensee's performance of all of its obligations under this Agreement.
- 6.3 The letter of credit shall meet the requirements listed on Exhibit D attached hereto.
- 6.4 Licensee shall provide and maintain the letter of credit during the entire term of this Agreement as follows:
  - 6.4.1 Licensee shall cause the original letter of credit to be delivered to Town's finance director.
  - 6.4.2 Licensee shall pay all costs associated with the letter of credit, regardless of the reason or manner such fees are required.
  - 6.4.3 Within fourteen (14) calendar days after Town gives Licensee notice that Town has drawn on the letter of credit, Licensee shall cause the letter of credit to be replenished to its prior amount.
- 6.5 Town may draw on the letter of credit upon any Event of Default, and in the following circumstances whether or not they are an Event of Default:
  - 6.5.1 Licensee fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this agreement.
  - 6.5.2 Licensee fails to make monetary payments required under this Agreement.

- 6.5.3 The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.
- 6.6 Town shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

#### SECTION 7. Records and Locator Service of Facilities.

The Licensee shall comply with A.R.S. §§ 40-360.21 et seq. by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Licensee's Facilities upon receipt of a "locate call" as promptly as possible, but in no event later than two working days. A copy of the Licensee's agreement to locate or proof of membership in Arizona Blue Stake Center shall be filed with the Town.

#### SECTION 8. Installation and Operation of the Facilities.

- 8.1 All installations shall meet the applicable standard specifications and requirements of the Town and shall comply with Section 22.04.020, Paragraph B of the Town Code.
- 8.2 Licensee shall maintain "as-built" drawings of its Facilities located within the Public Highway and shall comply with Section 22.04.020, Paragraph C of the Town Code.
- 8.3 The authority granted by this License to use the Public Highway does not authorize Licensee's use of the Facilities for the construction, installation or operation of Wireless Facilities, a Cable Television System, a Cable System, or a Video System or authorize the Licensee to operate as a cable operator or video provider as those terms are defined in the Communications Act of 1934, state law, or the Town Code. The authority granted by this License does not authorize the use of the Public Highway for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the FCC. The authority granted by this License is not in lieu of any other license or franchise the Town may require to occupy the Public Highways to provide service other than as authorized under Section 2.
- 8.4 In order for the Town to determine the Licensee's compliance with the terms of this License, within 30 days of a request for disclosure by Town, the Licensee shall provide the documentation requested by Town and shall comply with the requirements of Section 22.04.020, Paragraph F of the Town Code.
- 8.5 If the Facilities or any other Licensee equipment, improvements or activities within the Use Areas present any immediate hazard or impediment to the public, to Town, to other improvements or activities within or without the Use Areas, or to Town's ability to safely and conveniently operate the Public Highway or perform Town's utility, public safety and other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with Town's requests to secure the Use Areas, and otherwise cooperate with Town at no expense to Town to remove any such hazard or impediment.

Licensee's work crews shall report to the Use Areas within four (4) hours of any request by Town under this section.

- 8.6 Proprietary information disclosed by Licensee for the purposes of this License shall mean any document or material clearly identified as proprietary ("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 pertaining to services provided to its customers. Proprietary Information does not include this License with the exception of the System Route Map.
- 8.7 Proprietary Information disclosed by Licensee to the Town or its constituent departments shall be regarded as proprietary as to third parties. If the Town receives a request to disclose such Proprietary Information, the Town shall notify Licensee of such request and allow the Licensee a reasonable opportunity to defend its Proprietary Information from disclosure. The foregoing does 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, the Town shall only disclose those portions within the public domain.
- 8.8 Notwithstanding any provision in this License, the Licensee acknowledges and understands that Town is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. §§ 39-121, et seq.).

#### SECTION 9. Licensee Abandonment of the Facilities.

If the Licensee abandons use of its Facilities, or upon cancellation, revocation or termination of the privilege herein granted, Licensee shall notify the Town and shall comply with the requirements of Section 22.04.020, Paragraph H of the Town Code.

#### SECTION 10. Term of License.

- 10.1 The term of this License is five (5) years from the Effective Date unless sooner revoked or canceled.
- 10.2 At any time prior to the cancellation, revocation or termination of this License, the Licensee may apply to the Town for a renewal of the License in accordance with then-existing state and Town laws.
- 10.3 In any circumstance whereby Licensee would remain in possession or occupancy of the Use Areas or New Use Areas after the expiration of this Agreement, such holding over shall operate as a limited renewal or extension of this Agreement from month to month that may be terminated at any time by Town upon sixty (60) calendar days' notice to Licensee, or by Licensee upon sixty (60) calendar days' notice to Town.

#### SECTION 11. Transfer of License.

- 11.1 This License and the related rights and privileges may not be assigned or otherwise transferred without the express written consent of the Town, which consent shall not be unreasonably withheld or delayed. The new licensee shall be equally subject to all the obligations and privileges of this License including any amendments, which will remain in effect, as if the new licensee was the original Licensee.
- 11.2 The approval of any change of ownership interest shall include an assignment agreement signed by the new owner, Licensee, and the Town. Subject to confidentiality obligations, the Licensee shall provide Town a copy of the agreement or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by the Licensee. The Licensee shall notify the Town within sixty (60) days of any change in mailing address.
- 11.3 After assignment, the License, including any amendments, shall be binding on the assignee to the full extent that it was binding upon the Licensee.
- 11.4 Nothing in this Section 11 prohibits a pledge, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the Licensee'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 the Licensee through a default of the Licensee in loan obligations, the lender may assume the rights and obligations of Licensee. The Lender may not transfer or change control of the License without submitting the change to the Town for approval. If the lender continues operation on a basis at any time, the lender shall be subject to all provisions of the License. No later than three years after assumption of control by the lender, the lender shall apply to the Town for the right to continue assumption of control or transfer the License. Application for approval of the assumption of control or transfer shall be subject to consent by the Town and shall not be unreasonably denied or upheld. A "Lender" for the purposes of this License does not include a company, person, or corporation or other entities that operate cable television systems or 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 License without Town review and approval.
- 11.5 Notwithstanding the foregoing, prior consent shall not be required for transfer to any company which is owned or controlled or under common control and with the same direct parent as Licensee, 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, provided that, no such transfer shall be valid unless Licensee and the proposed transferee submit a binding agreement and warranty to the Town stating that:
- 11.5.1 The proposed transferee has read, accepts, and agrees to be bound by the License;
- 11.5.2 The proposed transferee assumes all obligations, liabilities and responsibility under the License for the acts and omissions of Licensee, known and unknown, for all purposes, and agrees that the transfer shall not permit it to take any position

or exercise any right which Licensee could not have exercised; and

11.5.3 The transfer will not substantially diminish the financial resources available to the Licensee.

11.6 Prior to completing a transfer described in this section, Licensee and the proposed transferee shall submit to the Town a description of the nature of the transfer, and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the License.

## SECTION 12. Nonexclusive License.

This License is not exclusive, and nothing in this License may be construed to prevent the Town from granting other similar Licenses to any others, or to reduce the powers and privileges granted the Town under the Constitution and laws of the State of Arizona.

## SECTION 13. Revocation of License; Penalties.

13.1 This License may be revoked prior to expiration if the Licensee fails to comply with any material term or condition of the License or applicable law.

13.1.1 Before revoking the License, the Town Manager shall give written notice to Licensee of the basis for revocation and give Licensee 60 days within which to cure.

13.1.2 The Town need not provide a 60-day cure period prior to revocation if the Town finds that the defect in performance is due to intentional misconduct, a violation of criminal law or is a part of a series of violations where the Licensee has already had notice and opportunity to cure.

13.1.3 If the Licensee requests a hearing before revocation, the Town shall provide a hearing prior to final action on the notice of intent to revoke.

13.2 Town may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other Town permits and authorizations until Licensee complies with the terms of the License or the applicable law.

13.3 Such remedies are cumulative and may be pursued in the alternative.

## SECTION 14. Acceptance of License Terms and Conditions.

14.1 This License shall not become effective until it has been approved by the Town Council and filed with the Town Clerk. By accepting this License, the Licensee covenants and agrees to perform and be bound by all of the terms and conditions imposed by the Town Charter, the Town Code and this License.

- 14.2 The Licensee acknowledges and accepts the right of the Town to issue a License.
- 14.3 The Licensee has reviewed the Town's ability to grant a License and accepts a License as the Town may now be legally able to grant.
- 14.4 In the event of conflict between the terms and conditions of the License and the terms and conditions on which the Town may grant a license or permission to use the Public Highway as set forth in applicable federal law or Arizona law, then the applicable federal law, Arizona law and Charter shall control.
- 14.5 Nothing in this License waives any of the requirements of the various codes, ordinances and regulations of the Town regarding permits, fees to be paid or manner of construction.

#### SECTION 15. General Conditions.

- 15.1 Any trimming of trees by the Licensee in the Public Highway shall be subject to regulation by the Town to protect the public health, safety and convenience. Prior approval of the Town is required prior to trimming of trees.
- 15.2 In all matters of License administration, the Town has authority to determine Licensee's compliance with the terms and provisions of the License, and in the event of noncompliance to exercise any or all of the remedies included in this License and as provided by Arizona law.
- 15.3 The Town has the right to inspect all construction or installation work subject to the provisions of this License and to make any tests it finds necessary to ensure compliance with the terms of this License and other pertinent provisions of law.
- 15.4 The Town shall have the right of intervention in any suit or proceeding involving the License to which Licensee is party, and Licensee shall not oppose that intervention.
- 15.5 Upon request from Town, but no more than annually, Licensee shall provide License information relating to its compliance with this License and/or to Town's or Licensee's rights or obligations under this License. Licensee shall make available to Town the requested reports or records in the formats in which they are customarily prepared by Licensee so long as such reports contain the information necessary to verify compliance. Licensee reserves the right to object to any request made under this Section 15.5 as unnecessary, unreasonable or inappropriate under the circumstances and to seek appropriate confidentiality protections for any information to be produced to Town. The Town shall have the right to inspect all books, records, maps, plans, and other like material which relate to the License at any time during normal business hours. Such records shall be available to Town at Licensee's offices in Maricopa County, Arizona or delivered electronically as may be appropriate. Licensee shall also require its employees, agents, and accountants to give their cooperation and assistance in connection with Town's access to such records.

- 15.6 Licensee shall relocate at no expense to the Town any Facilities or other encroachment installed or maintained in, on or under any public place or Public Highway, as may be necessary to facilitate any public purpose whenever directed to do so by Town. Such relocations shall be accomplished in accordance with the directions from Town and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this License and any applicable issued permits. Within ninety (90) days after service of notice by the Town, Licensee shall remove the designated portions of the Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the ninety-day period, Licensee shall take reasonable steps to remove the Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other Public Highway to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the Town. Town agrees to cooperate with Licensee to identify alternate locations where available within the Public Highway.
- 15.7 This License does not convey the right to install any of Licensee's Facilities on private property.
- 15.8 Licensee shall comply with all applicable Federal and State of Arizona laws, as well as all Town ordinances, resolutions, rules, and regulations whenever adopted or established as they pertain to the exercise of the rights and duties under this License.
- 15.9 Licensee shall have no recourse against the Town or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision, requirement or enforcement of the License, or because of defects in issuing the License.
- 15.10 Licensee shall not be relieved of its obligation to comply with any of the provisions of this License by reason of any failure of the Town upon one or more occasions to insist upon or to seek compliance with any License terms and conditions.
- 15.11 The Town reserves every right and power which is required to be reserved or provided by any ordinance, and Licensee, by its acceptance of this License, agrees to be bound thereby and to comply with any action or requirements of the Town in its exercise of those rights or powers, whenever enacted or established. Neither the granting of this License nor any provision of it constitutes a waiver or bar to the exercise of any governmental right or power of the Town. No privilege or exemption is granted under this License except those specifically described.
- 15.12 The Parties understand and agree that the Town's administration of its Public Highway and the use of them by providers of telecommunications services must be administered on a competitively neutral and nondiscriminatory basis. Accordingly, the terms of any agreement with other similarly situated providers shall, taken as a whole, be competitively neutral and nondiscriminatory when compared to this Agreement.
- 15.13 Licensee's representations and warranties made under this License or any permit issued hereunder shall survive termination or revocation.

15.14 Licensee and its Contractors shall comply with Environmental Laws. All activities upon or about the Public Highway of Licensee and its contractors shall be subject to the following regarding any Hazardous Substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq. or the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq. or any other applicable federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances");

15.14.1 Licensee and/or its Contractor(s) shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Public Highway. The prohibitions of the preceding sentence only shall not apply to: (i) ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the Public Highway, and any such materials shall be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery, and (ii) electric backup batteries and other materials that may contain Toxic Substances that are commonly used in the provision of Telecommunications Services.

15.14.2 Licensee and/or its Contractor(s) shall dispose of any Toxic Substances away from the Public Highway as required by law and as reasonably required by Town.

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

15.14.4 In addition to and without limitation of any other indemnities or obligations, Licensee shall pay, indemnify, defend and hold Town harmless against any loss or liability to the extent incurred by reason of any Toxic Substance on or affecting the portion of the Public Highway used that is attributable to or caused by Licensee, its Contractor(s) or anyone using the Public Highway under this License.

15.14.5 Licensee and/or its Contractor(s) shall promptly notify Town of any Toxic Substance at any time discovered or existing upon the Public Highway. Licensee is not responsible for Toxic Substances that may exist at the Public Highway if Licensee's Contractors and/or any other persons using the Public Highway under this License did not do any of the following: (i) participate in the Toxic Substance coming to the Public Highway, (ii) fail to promptly report any Toxic Substance to Town, or



(iii) participate in spreading or otherwise disturbing the Toxic Material.

Notwithstanding the above, Licensee shall not be responsible for any Toxic Substance previously existing in the Public Highway unless Licensee, Licensee's Contractors or any other persons using the Public Highway under this License were aware of the presence of the Toxic Material or should have been aware of it through the exercise of reasonable diligence, and then only to the extent Licensee's Contractors and/or any other persons using the Public Highway under this License exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material.

15.14.6 Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee acknowledges the possibility that the Public Highway may contain actual or presumed asbestos and other Toxic substances containing materials. Licensee shall not be responsible for Pre-existing Environmental Conditions provided that upon discovery Licensee immediately ceases activity in the Public Highway and notifies the Town.

15.14.7 Within twenty-four (24) hours after any violation by Licensee and/or by its Contractor(s) of this License pertaining to Toxic Substances, Licensee shall give Town notice reporting such violation.

- 15.15 Town shall have the right, because of a public emergency, to sever, disrupt, remove, tear out, dig up or otherwise damage and/or destroy Facilities of Licensee without any prior notice to Licensee, if the action is deemed necessary by either the Town Manager or Public Works Director as provided by Section 22.04.020, Paragraph L of the Town Code. In such event, neither the Town nor any agent, Contractor or employee of Town shall be liable to Licensee, its Contractors or its customers or their parties for any harm so caused to them or the Facilities except due to gross negligence or willful misconduct of Town, its agent, Contractor or employee.
- 15.16 Licensee shall pay any legally imposed and applicable Town, county and state transaction privilege and use tax. Such taxes are in addition to any non-tax amounts owed by Licensee pursuant to Section 4.2.1. Licensee consents to the disclosure of any and all information reported on Licensee's transaction privilege tax returns by authorizing and allowing the Town's tax collector to release such information to the Town Manager. Nothing in this section is intended to alter, modify, expand, or diminish in any way nor grant permission or acquiescence to otherwise increase or allow any special taxes or assessments to be imposed upon Licensee, unless the same are statutorily imposed on all similarly situated parties pursuant to applicable law.
- 15.17 It is mutually understood and agreed that this License shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this License or any provision thereof shall be instituted only in the courts located within Maricopa County, Arizona.
- 15.18 The issuance of a license, permit or other authorization by the Town is not a representation or warranty that such license, permit, or authorization is a legally sufficient

substitute for a franchise, and is not a representation of warranty that a franchise is not required.

- 15.19 Licensee certifies that it is not currently engaged in, and agrees for the duration of this License that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.
- 15.20 LICENSEE ACKNOWLEDGES AND AGREES THAT TOWN DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS PUBLIC HIGHWAY OR THE PREMISES SURROUNDING THE SAME, AND LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY TOWN PUBLIC HIGHWAY.
- 15.21 The indemnities of Licensee hereunder shall survive termination of this License.
- 15.22 Licensee acknowledges that this License is subject to cancellation by the Town pursuant to the provisions of A.R.S. §38-511, provided that prior to taking any such action to cancel this License, the Town shall first provide Verizon with notice of the facts and circumstances giving rise to such a right of cancellation, and provide Verizon with an opportunity to implement a reasonable cure to address those facts and circumstances.
- 15.23 Licensee warrants that no person has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the Town Council, or any employee of the Town has any interest, financially or otherwise, in this License. For breach or violation of this warranty, the Town shall have the right to revoke this License without liability.
- 15.24 Any provision in this License that may appear to give the Town the right to direct Licensee or Licensee the right to direct the Town as to the details of accomplishing the work or to exercise a measure of control over the work means only that the party shall follow the wishes of the other party as to the results of the work.
- 15.25 This License will be governed by the laws of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this License shall be instituted only in the courts located within Maricopa County, Arizona.
- 15.26 All notices, consent or other communication under this License shall be in writing and either delivered in person, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service and addressed as follows:

**To Licensee:**

**With a Copy to:**

**For Emergencies:**

**To Town:**

Town of \_\_\_\_\_  
\_\_\_\_\_, AZ 85\_\_\_\_  
ATTN: Town Manager

Notice shall be deemed received at the time it is personally served or, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) calendar days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received unless noted otherwise. Any Party may change its mailing address or the person to receive notice by notifying the other party as provided in this section.

15.27 This License is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, agreement, or relationship, partnership, or formal business organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth. Licensee agrees that no persons engaged by Licensee are Town employees and that no rights of Town Civil Service, Retirement or Personnel rules accrue to such persons. Licensee shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, workmen's compensation, unemployment compensation, other benefits, and all related taxes and premiums concerning such persons, and shall save and hold the Town harmless with respect thereto.

15.2 This License, and the exhibits listed below that are either attached and/or on file at the Town and available for inspection, are incorporated by this reference, and constitute the entire agreement between the Town and the Licensee with respect to this License and supersede all prior negotiations, communications, discussions and correspondence, whether written or oral, concerning this License. No supplement, modification, waiver or amendment of any term of this License shall be binding or effective unless executed in writing by the Parties. No waiver of any provision of this License shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

15.29 Nothing in this License, whether express or implied, is intended to confer any right or remedies on any persons other than the Parties to this License and their respective successors and permitted assigns. Nothing in this License is intended to relieve or discharge any obligation or liability of any person who is not a Party to this License. No person who is not a party to this License has a right of subrogation or action over or against any Party to this License.

- 15.30 Unless otherwise provided, the terms and provisions of this License shall be construed in accordance with their usual and customary meanings. The Parties waive the application of any rule of law that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) drafted the License. The words "hereof", "herein", "hereunder" and similar terms in this License refer to this License as a whole and not to any particular provision of this License. All references to "Sections" refer to the sections and paragraphs of this License unless specifically stated otherwise. The section and other headings contained in this License are inserted for convenience of reference only, and they neither form a part of this License nor are they to be used in the construction or interpretation of this License.
- 15.32 Except as set forth in Section 3.1, if any covenant, condition, term or provision of this License is held to be illegal, invalid or unenforceable, the remainder of this License or the application of such covenant, condition, term or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, shall not be affected.
- 15.33 Each of the Parties agrees to provide the other Party with any additional documents reasonably requested to fulfill the intent of this License.
- 15.34 The Parties agree that the recitals are accurate and correct and are incorporated by this reference.

The Parties have executed this License as of the date first set forth above.

Town Licensee

By: \_\_\_\_\_ By: \_\_\_\_\_  
Michael LeVault, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gust Rosenfeld, PLC, Town Attorney  
By Trish Stuhan

Exhibits  
Exhibit A Initial System Route Map  
Exhibit B Insurance Requirements  
Exhibit C In-Kind Payments  
Exhibit D Letter of Credit

## Exhibit A – Initial System Route Map

## Exhibit B – Insurance Requirements

A. The Licensee shall procure and maintain for the duration of this License, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Licensee, or its employees in the amounts and types set forth below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a combined single limit for bodily injury and property damage of \$1,000,000.00 per accident. Coverage shall be written on Insurance Services Office (ISO) form or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance with limits of \$1,000,000.00 each occurrence for bodily injury and property damage and, \$2,000,000.00 general aggregate including \$2,000,000.00 products-completed operations aggregate limit. Coverage shall be written on ISO occurrence form or a substitute form providing equivalent coverage and shall cover liability arising from premises-operations, independent contractors, products-completed operations, personal injury and advertising injury and contractual liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The Town shall be included as an additional insured as their interest may appear under this License under the Licensee's Commercial General Liability insurance policy with respect to the work performed under this License using ISO Additional Insured Endorsements or substitute endorsements providing equivalent coverage.

3. Professional Liability insurance with limits \$1,000,000.00 per claim and aggregate covering the negligent actions of the Licensee in the performance of professional services under this License.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Arizona and Employer's Liability with a limit of \$1,000,000.00 each accident/disease/policy limit.

B. The insurance policies shall be primary insurance as respects the Town. Any insurance, self-insurance, or insurance pool coverage maintained by the Town shall be in excess of the Licensee's insurance and shall not contribute with it.

C. Upon receipt of notice from its insurer(s), the Licensee shall use commercially reasonable efforts to provide the Town with thirty (30) days' prior written notice of Cancellation.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:-VII.

E. Verification of Coverage. Licensee shall furnish the Town with certificate of insurance and blanket additional insured endorsements evidencing the insurance requirements of

Licensee before commencement of the work.

F. Licensee shall have the right to self-insure any or all of the above-required insurance.

G. Licensee's maintenance of insurance as required by this License shall not be construed to limit the liability of Licensee to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy to which the Town is otherwise entitled at law or in equity.

## Exhibit C – In-Kind Payments



## Exhibit D

### Letter of Credit

#### Letter of Credit Standards.

Issued by a commercial bank acceptable to the Town. The bank must meet the following minimum requirements:

- Chartered under the laws of the United States, any state thereof or the District of Columbia and which is insured by the Federal Deposit Insurance Corporation.
- Licensed lender in the State of Arizona.
- Long-term, unsecured and unsubordinated debt obligations are rated in the highest categories by either Moody's Investors Service, Inc. (Moody's) or Standard & Poor's Ratings Service (S&P) or their respective successors, which shall mean:
  - Moody's: Aaa, Aa1, Aa2, Aa3, A1 or A2
  - S&P: AAA, AA+, AA, AA-, A+ or A
- If at any time the Letter of Credit Issuer Requirements are not met, or if the financial condition of such issuer changes in any materially adverse way, as determined by the Town in its sole discretion, then a replacement Letter of Credit which meets the requirements must be provided to the Town within five (5) days of receiving written notice from the Town.

#### Letter of Credit Format.

- The Beneficiary must be the Town of \_\_\_\_\_.
- The Amount must be ten thousand dollars (\$10,000).
- The Principal must be the Licensee who is a signatory to the License Agreement.
- The Bank Name & Address upon which payment would be drawn must be clearly stated on the face of the document.
- The Text identifying the License agreement must be detailed and reflect the specific agreement number.
- The Expiration Date will be a minimum of two years. The Expiration Date must automatically extend for one year without amendment unless at least thirty (30) days prior to any such expiry date issuer notifies the Town of their election not to extend.
- The Presentation of Draft requirement will be drawn on a local branch or presentable at a correspondent bank within Maricopa County.
- The text must contain a Partial Draft Clause that clearly indicates partial draft draws are permissible.

**TOWN OF YOUNGTOWN**

**LICENSE APPLICATION**

**TELECOMMUNICATIONS FACILITIES IN THE PUBLIC HIGHWAY**

**Please complete the information below and return to:**

Jeanne Blackman, Town Manager  
Town of Youngtown, Arizona  
12030 N. Clubhouse Square  
Youngtown, AZ 85363

**Date:** \_\_\_\_\_ **Type:** New \_\_\_\_\_ Renewal \_\_\_\_\_ Amendment \_\_\_\_\_

**Name of Licensee:** \_\_\_\_\_ (as to appear on License)

**Type of business structure:** (LLC, Corporation, etc.) \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **FAX Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

**Contact person of applicant:** Name \_\_\_\_\_ Phone Number: \_\_\_\_\_

**E-mail address:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Who may we contact regarding Privilege License Tax?**

**Name** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_ **Taxpayer Identification Number:** \_\_\_\_\_

**Who may we contact to verify Tax ID #?**

**Name** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

Attach a copy of your certificate of convenience and necessity from the Arizona Corporation Commission.

Attach a detailed map showing the location of your proposed facilities in the public highway. If this is a license renewal, a current map of your existing network located within the Town of Youngtown.

Describe the number of miles or sites you plan to install within the next 12 months. \_\_\_\_\_

Describe the number of miles or sites you plan to install within the next five years. \_\_\_\_\_

Names of third parties who will have user contracts: \_\_\_\_\_

If this is an application to amend an existing license, describe the changes that have led to your request for an amendment to your License: \_\_\_\_\_

If this is a request to transfer a license, provide information regarding the transferee and how the transferee will affect services to be provided: \_\_\_\_\_

License Application Fee: \$ \_\_\_\_\_ (New and Renewal)

License Amendment Application Fee: \$ \_\_\_\_\_

Please make check payable to TOWN OF YOUNGTOWN, ARIZONA

Approval of the license or renewal may take up to 60 days to process. If you have any questions please feel free to contact Jeanne Blackman, Town Manager at (623) 933-8286.

AN APPLICATION WILL NOT BE DEEMED COMPLETE UNTIL ALL REQUESTED INFORMATION HAS BEEN PROVIDED.

By submitting this application, Applicant agrees that if a license is issued Applicant will comply with the Town's public highway use, mapping, and insurance and letter of credit requirements, license requirements and the enforcement and administrative provisions of Title 22 of the Town Code.

\_\_\_\_\_  
Applicant

Application fee received on: \_\_\_\_\_

Copy of Title 22 of Town Code provided on: \_\_\_\_\_

Form of License Agreement provided on (including form of letter of credit and insurance requirements: \_\_\_\_\_

## **STEPS TO OBTAIN A TOWN OF YOUNGTOWN TELECOMMUNICATIONS SERVICES – WIRED FACILITIES IN PUBLIC HIGHWAY LICENSE**

The information in this document is intended only to be a general guide to the telecommunications license application process and to point out some of the important issues and requirements that are specified in greater detail in the Town Code, Arizona Revised Statutes and federal law related to telecommunications licensing and regulation. You should review and become familiar with the requirements of Title 22 of the Youngtown Town Code.

### **GENERAL**

- The term of a license is limited to 5 years. A.R.S. § 9-583
- Only a single application fee and license may be required for one telecommunications corporation that offers intrastate and interstate telecommunications services. A.R.S. § 9-582
- Proof that the applicant has received a certificate of convenience and necessity from the Arizona corporation commission must be submitted. A.R.S. § 9-583
- A licensee must participate as a member of the Arizona location service for its underground facilities. A.R.S. Title 40, Chapter 1, Article 6.3

### **LICENSE APPLICATION AND RENEWAL PROCESS**

1. All requests for a Town of Youngtown Telecommunications Services – Wired Facilities in the Public Highway License shall be forwarded to Jeanne Blackman, Town Manager. If the request is from a new telecommunications provider, then the applicant shall submit a copy of the Certificate of Convenience and Necessity from the Arizona Corporation Commission and a description of the business it intends to conduct.

An application form for a license is attached. The applicant will review the documents and contact the Town Manager if it has any questions. Applicants for either a new or renewal license must pay a fee of \$\_\_\_\_\_, and a fee of \$\_\_\_\_\_ to amend a license.

The Town Manager will review the application for administrative completeness and describe any deficiencies in writing for the applicant, ordinarily within 20 days. Once the application is complete, the Town Manager will perform a substantive review of the application within 40 days, at which time the Town Manager will inform the applicant that Town staff either approves or denies the license. New licensees are required to provide a letter of credit in the amount of \$100,000 in favor of the Town while they construct their initial system build out. The letter of credit is then reduced to \$50,000 for the remaining term of the license.

2. Upon Staff approval of the application, if the applicant informs the Town Manager that it accepts the license forms with no changes, the Town Manager will process a request for Town Council approval to issue the license. This approval process ordinarily requires about 30 days, but may require up to 60 days if required for Town Council scheduling purposes.

3. If the applicant requests specific changes to the license or other requirements, then the Town Manager and Town Attorney will review the changes. The time required for this review will depend upon the extent and complexity of the changes requested, but usually it can be completed within 30 days. Town staff will respond in writing by either accepting or rejecting the proposed changes, or proposing alternatives. Upon approval of the final form of the license documents and concurrence in writing from the licensee, the Town Manager will send the final form to the licensee process a request for Town Council approval to issue the license.

4. The applicant will execute the license and comply with the insurance requirements. The applicant will sign the license and attach the approved certificate of insurance, W-9 (Request for Taxpayer Identification Number and Certification), and return all documents to the Town Manager. The Town Manager will route the documents for Town signatures, notarization, and attestation. After all documents are signed, the originals are returned to the Town Manager and a copy is sent to the licensee.

#### PROCESS UPON DENIAL OF LICENSE APPLICATION

If an application for a license is denied, the Town Manager will provide the applicant with a written justification for the denial with references to the applicable statutes, ordinances, codes or substantive policy statements on which the denial is based. The notice of denial will explain the applicant's right to protest the denial to the Town Council, that the applicant must specify the basis for its protest, including a description for why it believes Town Council incorrectly denied the license, and that the protest must be filed within 20 working days of the date of the denial.

**Town of Youngtown Telecommunications Services - Wired Facilities in Public Highways**  
**dated \_\_\_\_\_ 2020**

**Title 22 TELECOMMUNICATIONS SERVICES – WIRED FACILITIES IN PUBLIC HIGHWAYS**

**Chapter 22.01**  
**DEFINITIONS**

**21.01.010 Definitions.**

In this title, unless the context otherwise requires:

“Commercial mobile radio service” means two-way voice commercial mobile radio service as defined by the Federal Communications Commission in 47 United States Code § 157.

“Environmental laws” means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* or the Toxic Substances Control Act, 15 U.S.C. §§ 2601, *et seq.* or any other applicable federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements.

“Facilities” means the plant, equipment, and property used in the provision of telecommunications services and not owned by the town, including but not limited to wires, pipe, conduits, pedestals, antennas, and other appurtenances placed under the public highways and not owned by the town and used in the provision of telecommunication services. The term does not include wireless facilities as that term is defined in A.R.S. § 9-591 or video services as defined in A.R.S. § 9-1401.

“Hazardous substances” means those substances defined as toxic or hazardous substances, pollutants, or wastes by environmental laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

“In-kind payments” means facilities and/or services provided or to be provided by licensee in lieu of all or a portion of the fees imposed by town for the use of the public highway.

“Interstate telecommunications services” means telecommunications services provided between users in Arizona and users outside of Arizona.

“License” means this non-exclusive authorization granted by the town to construct, operate, maintain, reconstruct, repair and remove the facilities of licensee.

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

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

“System route map” means the map showing the locations of the facilities in the use areas pursuant to a license, as may be amended by town engineer approval of permits for new use areas.

“Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received, as defined in A.R.S. § 9-581. The term does not include commercial mobile radio services, pay phone services, interstate services, wireless services or video services.

“Telecommunications corporation” means any public service corporation to the extent that it provides telecommunications services in this state.

“Telecommunications services” means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used. The telecommunications services of a licensee shall be described in the license approved by the council.

“Use areas” means the initial locations of the facilities of a licensee as set forth in a license and approved new use areas pursuant to Section 22.04.020 Paragraph A.

“User contracts” means contracts a licensee enters into with third parties to use the facilities pursuant to a license.

“Video Services” has the same meaning as in A.R.S. § 9-1401.

“Wireless Services” has the same meaning as in A.R.S. § 9-591.

## **Chapter 22.02 GENERAL PROVISIONS**

### **22.02.010 License Required.**

No telecommunications corporation shall install, maintain, construct or operate telecommunications facilities in any public highway in the town unless a license to use the highways to provide telecommunications services has first been granted by the town council under this chapter to such telecommunications corporation; provided, however, that this chapter does not apply to the installation, maintenance, construction and operation of wireless facilities as that term is defined in A.R.S. § 9-591 or a video service network as that term is defined in A.R.S. § 9-1401.

#### **22.02.020      Exception.**

Notwithstanding 22.02.010, any telecommunications corporation that was providing telecommunications service within the State of Arizona as of November 1, 1997, pursuant to a grant made to it or its lawful predecessors prior to the effective date of the Arizona constitution, may continue to provide telecommunications services pursuant to that state grant, until and unless the state grant is lawfully repealed, revoked or amended, and need not obtain any further grant from the town to provide telecommunications services; provided, however, that such entity must in all other respects comply with the requirements applicable to the telecommunications corporations as provided in Title 9, Chapter 5, Article 7 of the Arizona Revised Statutes.

#### **22.02.030      Existing Licenses.**

Nothing in this ordinance shall be deemed to affect the terms or conditions of any license or permit issued by the town prior to the effective date of the amendments of this ordinance or to release any party from its obligations thereunder. Those licenses or permits shall remain fully enforceable in accordance with their terms. The town manager, with the consent of the council, may enter into agreements with licensees or permittees to modify or terminate an existing license or agreement.

#### **22.02.040      Limitations.**

A license to any telecommunications corporation to use the highways to install, maintain, construct or operate telecommunications facilities shall not authorize the use of the highways to provide any other service, including video services and wireless services; nor shall the issuance of the same invalidate any license or permit that authorizes the use of the highways for such other services; nor shall the fact that a telecommunications corporation holds a license or permit to make any other use of the highway or to provide any other service, authorize installation, maintenance, construction or operation of telecommunications facilities in any highway in the town, without obtaining a license hereunder.

#### **22.02.050      License Not Exclusive.**

Any license granted shall not be exclusive.

### **Chapter 22.03 LICENSE APPLICATION**

#### **22.03.010      Application.**

Any telecommunications corporation desiring a license under this chapter to construct, install, operate and maintain telecommunications facilities in public highways of the town shall file an application with the town clerk requesting a license in the form prescribed by the town and shall pay an application fee in an amount established by resolution of the town council. Such amount shall be payable in cash, certified or cashier's check, wire transfer, or in any other manner acceptable to the town manager, made payable to the town. No application shall be considered without receipt of said fee. The applicant shall be responsible for reimbursing the town's full



reasonable costs in excess of the application fee in processing the application. The application fee is in addition to any permit fees established for persons doing work or locating facilities in the public highway.

#### **22.03.020      Application Content.**

Each application shall be in a form provided by the town, and, at a minimum, (1) show where the initial facilities the applicant will use will be located, or contain such other information as the town may deem necessary in order to ensure that the applicant will comply with requirements for use of the highways; (2) identify the applicant, its name, address and telephone number; (3) contain a description of the services to be provided; and (4) set out a description of any agreement with any other entity that would permit such entity to use the facilities.

#### **22.03.030      Letter of Credit.**

Each applicant shall provide a letter of credit in favor of the town in the amount of \$100,000 to be in effect during construction of the initial system build out. The letter of credit shall then be reduced to \$50,000 for the remaining term of the license.

#### **22.03.040      Telecommunications License.**

Upon receiving an application for a license that satisfies the conditions of Section 22.03.020, the town shall promptly proffer a telecommunications license to the applicant for its review, and may inquire into matters relevant to the issuance of the license. If the applicant agrees to the terms and conditions of the license, the request shall be submitted to the council with a recommendation for approval.

### **Chapter 22.04 CONDITIONS OF LICENSE**

#### **22.04.010      General Conditions.**

As a condition of issuing or renewing a license to use the public highways to provide telecommunications services, the town may require:

- A.      Proof that the applicant has received a certificate of public convenience and necessity from the Arizona Corporation Commission;
- B.      The applicant to agree to comply with highway use requirements that the town may establish from time to time;
- C.      The applicant to agree to provide and maintain accurate maps showing the location of all its facilities and the facilities it will use in the highways within the town, and to comply with such other mapping requirements as the town may establish from time to time; applicant shall provide the town with electronic mapping information in a format compatible with the current town electronic mapping;

- D. The applicant to obtain the insurance, and provide proof of insurance as required by the town; to post the performance bonds and security fund required by the town; and to agree to fully indemnify the town, its officers, agents, boards and commissions, in a form satisfactory to the town; and agree that it shall have no recourse whatsoever against the town or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of any provision or requirement of the town because of the enforcement of the license or because of defects in this chapter or the license issued;
- E. The applicant to agree to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the town.

**22.04.020 Administration and Enforcement.**

Every license shall be subject to the following administrative and enforcement provisions:

- A. The permission granted by a license is limited to the use areas, which shall be identified in the system route map attached to an approved license. New use areas may be approved upon application for a permit pursuant to Chapter 12.04 of this code for such new use areas. The applications shall include specific information on the location of the new use areas and the proposed facilities. Upon approval by the town engineer, the new use areas shall be depicted on the system route map and shall be subject to all terms and conditions of the license and lawful conditions, if any, imposed by the town.
- B. A licensee's facilities shall meet the applicable standard specifications and requirements of the town. Licensee's use of the public highway shall be according to plans approved by the town engineer, provided that such approval shall not be unreasonably withheld or delayed. Facilities shall not be located above-ground unless there is no practical alternative and any such facilities shall be earth-toned colors or screened to the extent reasonably practical. Licensee's installation of facilities shall be coordinated with the town to accommodate opportunities for common installation. Prior to the start of any construction work, licensee shall notify all affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures in order to allow them to make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area. If an emergency requires activity without such written notice, the licensee shall use reasonable efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Licensee shall identify a representative, such as a project manager, who shall be the contact person for the town during any construction periods.
- C. A licensee shall maintain "as-built" drawings of its facilities located within the public highway and furnish a copy electronically in a mapping format compatible with the current town electronic mapping format and in hard copy form. Upon completion of new or relocation construction of underground facilities in the

public highway, licensee shall create and maintain precise, up-to-date maps of any of its facilities and any above-ground equipment located in the public highway and precise and verifiable horizontal and vertical location information and will make this information available to the town upon the installation of any new facilities. A licensee will also provide surface-location marking of licensee's facilities that are located underground within any public highway within thirty (30) business days of installation. If complete updates are not provided in a compatible format, licensee shall pay the actual, reasonable costs the town incurs to update the town's electronic mapping format due to the location or relocation of the licensee's facilities. In the event licensee fails to supply records in the town specified format and there is a cost to the town in converting licensee-provided files, licensee will be responsible for the conversion costs and will pay such costs within thirty (30) days of the date of the bill from the town invoicing the amount due.

- D. The authority granted by a license does not authorize licensee's use of the facilities for the construction, installation or operation of wireless facilities, a cable television system, a cable system, or a video services system or authorize the licensee to operate as a cable operator or video services provider as those terms are defined in the Communications Act of 1934, state law, or the town code. The authority granted by a license does not authorize the use of the public highway for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the Federal Communications Commission. The authority granted by a license is not in lieu of any other license or franchise the town may require to occupy the public highways to provide service other than as authorized under a license.
- E. A licensee shall comply with rules and regulations of the Federal Communications Commission and Arizona Corporation Commission that apply to the services that licensee provides over the facilities in the public highway.
- F. In order for the town to determine a licensee's compliance with the terms of a license, within 30 days of a request for disclosure by the town, the licensee shall provide the documentation requested by town. For purposes of confirming that the licensee is providing solely services authorized under a license, upon reasonable request and notice by the town, the licensee shall make available for joint inspection and testing as requested by the town, the current services being provided by licensee through the facilities authorized by a license. If the licensee determines that in order to respond to the town's request for documentation and inspection that it must reasonably provide proprietary information, the licensee shall so designate such claim to proprietary treatment on documents provided to the town.
- G. If the facilities of a licensee or any other licensee equipment, improvements or activities within the use areas present any immediate hazard or impediment to the public, to the town, to other improvements or activities within or without the use

areas, or to the town's ability to safely and conveniently operate the public highway or perform the town's utility, public safety and other public health, safety and welfare functions, then licensee shall immediately remedy the hazard, comply with the town's requests to secure the use areas, and otherwise cooperate with the town at no expense to town to remove any such hazard or impediment. Licensee's work crews shall report to the use areas within four (4) hours of any request by the town under this paragraph.

- H. If a licensee abandons use of its facilities, or upon cancellation, revocation or termination of a license, licensee shall notify the town and may, subject to the town's approval, permanently abandon the facilities in place. In lieu of permanent abandonment, the town may require a licensee to the reasonable satisfaction of the town and, without cost or expense to the town, promptly to remove its facilities and to restore the public highway. If a licensee fails or refused to remove the facilities required by town to be removed, the town may do so and licensee shall pay the cost of such removal and the restoration of the highway. Upon permanent abandonment, if the town does not require removal, a licensee shall submit to the town a proposal and instruments for transferring ownership to the Town. Any facilities which are not removed within one hundred twenty (120) days of the town's written request automatically shall become the property of the town. The Arizona Blue Stake Center must be notified to record abandoned facilities.
- I. Any and all rights granted to a licensee shall be subject to the prior and continuing right of the town to use the public highway, including the use areas. Any and all rights granted to a licensee shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect the public highway. A license shall be construed to grant, convey, create or vest a perpetual real property interest in land to a licensee.
- J. A licensee accepts the risk that there may now or in the future exist in the use areas other work and improvements that the town may approve from time to time. The town shall have full authority to regulate use of the use areas and to resolve competing demands and preferences regarding use of the use areas and to require a licensee to cooperate and participate in implementing such resolutions.
- K. Neither the town nor any agent, contractor or employee of the town shall be liable to a licensee, its customers or third parties with user contracts for any service disruption or for any other harm caused them or the facilities due to competing uses of the public highway.
- L. A licensee may enter into user contracts with unrelated third parties in the ordinary course of the licensee's business for use of portions of the facilities of the licensee. All such third parties shall obtain a license from the town pursuant to A.R. S. § 9-583, Paragraph D. No person shall transmit data over the facilities of the licensee or otherwise use the facilities except under a user contract with a

licensee. The licensee shall provide to town (i) the name of the third party, (ii) the name, title, address, telephone number, and email address of a person with authority to speak for the third party, (iii) the route of the proposed service, and (iv) any other information relevant to the use of the public highway by the third party reasonably requested by the town.

- M. All signage is prohibited except that a licensee shall install and thereafter maintain all signs and markings that the facilities and the licensee's activities may make necessary for safe use of the use areas by the public, the town, licensee and other persons who may be at the use areas at any time for any reason.
- N. Licenses shall be personal to the licensee. Except as provided in the license, no transfer of a license or licensee, or change of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made to the town and the town's prior written consent is obtained, which consent will not be unreasonably withheld or delayed. In making a determination as to whether to approve a transfer, the town may consider the same information and qualifications required of an original application for a license; whether the licensee is in compliance with its license and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transfer would result in an evasion of other applicable provisions of law, or impair lawful contracts; and the effect of the transfer on the town's interest. No application for a transfer of a license shall be granted unless the proposed transferee agrees in writing that it will abide by and accept all terms of the chapter and the license, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous licensee under this chapter and the license for all purposes, including renewal. Approval by the town of a transfer of a license does not constitute a waiver or release of any of the rights of the town under this chapter or the license, whether arising before or after the date of the transfer.
- O. Every licensee shall be subject to the town's exercise of such police, regulatory and other powers as it now has or may later obtain, and a license may not waive the application of the same.
- P. Every license shall be subject to revocation if the licensee fails to comply with the material terms and conditions of the license, or applicable law; provided, however, that a license shall not be revoked unless the licensee is given written notice of the defect in performance, and fails to cure the performance within sixty (60) days of the notice, except where the town finds that the defect in performance is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations where the licensee has already had notice and opportunity to cure. A hearing shall be held before a license is revoked if the licensee requests a hearing.

- Q. Activities of a licensee and contractors of a licensee in the public highway shall be subject to environmental laws, now or hereafter imposed. A licensee and/or its contractors shall not produce, dispose, transport, treat, use or store any hazardous substances upon or about the public highway. These prohibitions shall not apply to: (i) ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the highway, and any such materials shall be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery, and (ii) electric backup batteries and other materials that may contain hazardous substances that are commonly used in the provision of telecommunications services. Disposal of hazardous substances shall be in accordance with environmental law. A licensee shall promptly notify the town of any hazardous substance at any time discovered or existing upon the highway. Within twenty-four hours after any violation by a licensee or its contractors of this license pertaining to hazardous substances, the licensee shall give the town notice reporting such violation.
- R. The town shall have the right, because of a public emergency, to sever, disrupt, remove, tear out, dig up or otherwise damage and/or destroy facilities of a licensee without any prior notice to licensee, if the action is deemed necessary by the town manager. In such event, the town shall not be liable to the licensee, its contractors or its customers or their parties for any harm so caused to them or the facilities except due to gross negligence or willful misconduct of town. The town shall inform the licensee of any actions taken. Licensee shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by the town.
- S. Penalties for violation of license.
1. Damages for violation of the license terms. Any remedies available to the town are cumulative, and are not limited by the recovery of any amounts pursuant to the insurance provisions of the license or pursuant to any indemnity clause.
  2. A requirement that if the licensee fails to pay amounts owed to the town by the time prescribed for payment, the licensee shall pay interest on the amounts owed, at the rate of one percent (1%) per month.
  3. A requirement that licensee shall produce books and records for the town's inspection and copying, prepare reports, respond to questions and permit the town to have access to its facilities as the town may request in order to determine whether licensee has complied with its obligations under the license, or other applicable law.

**22.04.030      Renewal.**

A licensee that receives a telecommunications service license pursuant to this chapter may apply for a renewal of its license, which renewal shall be reviewed in accordance with the requirements of state law.

**22.04.040      Term.**

Any license granted by the town pursuant to this chapter shall commence upon adoption of the license and acceptance of the license by the licensee within thirty (30) days of the grant. The license shall be effective for a period of five (5) years, and subject to the conditions and restrictions provided in the instrument and this chapter.

**Chapter 22.05  
COMPENSATION**

**22.05.010      Amount of compensation.**

The town shall not levy a tax, rent, fee or charge to a telecommunications corporation for the use of a public highway to provide telecommunications services, or levy a tax, fee or charge upon the privilege of engaging in the business of providing telecommunications services, except that, in connection with its provisions of telecommunications services and its use of the highways to provide the same, each telecommunications corporation shall:

- A.      Pay a transaction privilege tax on the business of providing telecommunications services or applicable use tax.
- B.      Pay public highway construction permit fees and utility poles and wires construction permit fees established from time to time by the town pursuant to Chapter 12.04 of this code.
- C.      Pay all reasonable costs associated with the construction, maintenance and operation of its facilities in the public highways used to provide telecommunications services, including reasonable costs associated with damage caused to the public highways.
- D.      A telecommunications corporation that has placed facilities in public highways that carry interstate traffic between and among the telecommunication corporation's points of presence exclusive of facilities used by the local network and the portion of the interstate network that carries intrastate calls, shall pay an annual fee based on the number of linear feet of trench in the public highways. The rate per linear foot shall be set by council resolution and shall not exceed the highest rate per linear foot a political subdivision charged a licensee on or before December 31, 1999. The rate per linear foot shall not be increased in any year by more than the increase in the average Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics.

- E. The licensee may provide in-kind benefits such as facilities or services to the town if agreed to by the town and licensee. The calculation of the in-kind benefits shall be set forth in the license. Any in-kind facilities provided to the town under the license shall remain in possession and ownership of the town after the term of the license expires. The value of in-kind benefits shall be less than or equal to, and may be offset against, payments of interstate linear foot charges or transaction privilege tax on the business of providing telecommunications service owed to the town, but shall not be offset for any combination of intrastate and interstate charges.

**22.05.020 Disputes.**

If the licensee disputes the amount of town construction permit fees or other fees payable under this chapter, the matter shall be referred to a dispute resolution board. The board shall consist of three (3) members agreed upon by both parties. Expenses for the board shall be shared equally by the town and the licensee. The board will hear the dispute promptly, and render a decision within twenty (20) days after the hearing. All decisions of the board are non-binding on the town and the licensee; however, the findings of the board shall be admissible in any legal action. The town and the licensee shall accept or reject findings of the board within thirty (30) days after receipt of the findings. If damages are assessed by the board, the licensee shall pay town within thirty (30) days of receipt of an invoice. Late charges of five percent (5%) and interest charges of one and one-half percent (1.5%) per month shall be added for late payment.

**22.05.030 Denial of Application.**

If an application for a license is denied, the town manager will provide the applicant with a written justification for the denial with references to the applicable statutes, ordinances, codes or substantive policy statements on which the denial is based. The notice of denial will explain the applicant's right to protest the denial to the town council, that the applicant must specify the basis for its protest, including a description for why it believes town council incorrectly denied the license, and that the protest must be filed within 20 working days of the date of the denial.