



Agenda
Work Study and Possible Executive Session
Queen Creek Town Council
Queen Creek Town Hall, 22350 S. Ellsworth Road
Council Chambers
November 7, 2012
5:30pm

1. Call to Order

2. Roll Call (one or more members of the Council may participate by telephone)

3. Motion to adjourn to Executive Session (to be held in the Saguaro Conference Room of the Municipal Services Building) for the following purposes:

A. Discussion and consultation with the Town Attorney for legal advice and to consider the Town's position and instruct the staff regarding acquisition of property (H2O Inc. Water Utility). (A.R.S. 38-431.03(A)(3), (4) & (7).

B. Discussion and consultation with the Town Attorney for legal advice with the Town's Attorney and representatives regarding the sale or lease of 20-acre parcel in Town Center. A.R.S. 38-431.03(A)(3), (4) & (7).

C. Discussion and consultation for legal advice and to consider the Town's position and instruct its attorneys regarding an intergovernmental agreement. A.R.S. 38-431.03(A)(3) and (4).

ITEMS FOR DISCUSSION These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

4. Presentation on the Citizen Survey results.

5. Presentation and discussion on SB1598 Timelines.

6. Discussion on the Draft 2013-2018 Corporate Strategic Plan. **TAB P**

7. Adjournment



Agenda
Regular and Possible Executive Session
Queen Creek Town Council
Queen Creek Town Hall, 22350 S. Ellsworth Road
Council Chambers
November 7, 2012
7:00 p.m.

1. Call to Order

2. Roll Call (one or more members of the Council may participate by telephone)

3. Pledge of Allegiance:

4. Invocation: Pastor Ben Lee – Living Waters Bible Church

5. Ceremonial Matters: Presentations, Proclamations, Awards, Guest Introductions and Announcements.

A. Recognition of Webelos II Den Leaders, Dragon Patrol Pack 738

B. Recognition of Eagle Scout Jacob D'Wayne Jones

C. Recognition of Central Christian Church

6. Committee Reports

A. Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

B. Partner agencies quarterly or periodic updates to Council. This may include but is not limited to Queen Creek Chamber of Commerce; Queen Creek Performing Arts Center; Boys & Girls Club of East Valley; and Maricopa or Pinal County Board of Supervisors or other governmental agencies. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

1. Boys & Girls Club – 1st Quarter Report

C. Economic Development Commission – October 24, 2012

7. Public Comment: Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please complete a "Request to Speak Card", located on the table at the rear of the Council Chambers and turn it in to the Town Clerk prior to the beginning of the meeting. There is a time limit of three minutes for comments.

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8. Consent Calendar: Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. Public Hearing items are designated with an asterisk (*). Prior to consideration of the Consent Agenda, the Mayor will ask whether any member of the public wishes to remove a Public Hearing item for separate consideration. Members of the Council and or staff may remove any item for separate consideration.

A. Consideration and possible approval of the October 3, 2012 Work Study and Regular Session Minutes. **TAB A**

B. Consideration and possible approval of the October 17, 2012 Work Study and Regular Session Minutes. **TAB B**

C. Consideration and possible approval Amendment No. 1 to the Intergovernmental Agreement between Maricopa County Flood Control District and the Town of Queen Creek (Town Contract 2009-88) for the construction of Sonoqui Wash Phase II (IGA FCD 2009A011A) extending the Town's reimbursement payments to July 2016. **TAB C**

D. Consideration and possible approval of an Equipment Purchase Contract with H-GAC/Crafco for the purchase of a SS125 Melter/Crack Sealer Diesel Compressor in the amount of \$52,482.55. **TAB D**

E. Consideration and possible approval of a Cable License Agreement between the Town of Queen Creek and Qwest Broadband Services Inc., dba CenturyLink. **TAB E**

F. Consideration and possible approval of Work Order #001 to AJP Electric, Inc. (Contract 2012-002) in an amount not to exceed \$49,794.80 for the construction of a new traffic signal at the intersection of Chandler Heights & Sossaman Roads. **TAB F**

G. Consideration and possible approval of a Map of Dedication for Chandler Heights and Hawes Roads, a request by Schoolhouse Queen Creek, LLC. **TAB G**

H. Consideration and possible approval of **Resolution 911-12** Intention to Order the Purchase of Electricity for a Streetlight Improvement District for Villagio – SLID #65, No. 2012-001. **TAB H**

I. Consideration and possible approval of **Resolution 912-12** Ordering the Improvements for the purpose of purchasing electricity for a Streetlight Improvement District for Villagio– SLID #65, No. 2012-001. **TAB I**

J. Consideration and possible approval of **DR12-053** “Meritage at Victoria”, 50’ Series, a request by Greg Davis on behalf of Meritage Homes for approval of six (6) new floor plans with three (3) elevations each to be constructed in Parcel 11A on 111 lots of the Victoria Subdivision located at the northeast corner of Ocotillo & Hawes Roads. **TAB J**

K. Consideration and possible approval of **DR12-068** “Meritage at Victoria”, 60’ Series, a request by Greg Davis on behalf of Meritage Homes for approval of six (6) new floor

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plans with three (3) elevations each to be constructed in Parcel 11 on 77 lots of the Victoria Subdivision located at the northeast corner of Ocotillo and Hawes Roads.

TAB K

*L. Public Hearing and possible *continuance* of **RZ12-057/SD12-058 Ocotillo Heights, Phase 2**. A continuance to the December 5, 2012 Council Meeting has been requested.

TAB L

PUBLIC HEARINGS: If you wish to speak to the Council on an item listed as a Public Hearing, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

None.

FINAL ACTION: If you wish to speak to the Council on an item listed under Final Action, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

9. Discussion and possible approval of a one-year Marketing Partnership Agreement with The Old Town Queen Creek Alliance. **TAB M**

10. Discussion and possible approval to utilize the east side of Ellsworth Road Underpass to promote Queen Creek businesses. **TAB N**

11. Discussion and possible approval of **Resolution 920-12** authorizing and directing the Mayor, Town Manager, Town Clerk and Town Attorney to do all acts, execute all documents and pay all fees necessary for the acquisition of the assets of the H2O, Inc. Water Utility. **TAB O**

ITEMS FOR DISCUSSION: These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

12. Presentation and discussion on SB1598 Timelines.

13. Discussion on the Draft 2013-2018 Corporate Strategic Plan. **TAB P**

14. Discussion on residential design standard options. **TAB Q**

15. Motion to adjourn to Executive Session: The Council may reconvene the Executive Session for any of the items listed on the Executive Session Agenda.

16. Adjournment



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**Minutes
Work Study Session
Queen Creek Town Council**
Queen Creek Town Hall, 22350 S. Ellsworth Road
Council Chambers
October 3, 2012
5:30pm

1. Call to Order

The meeting was called to order at 5:30pm.

2. Roll Call (one or more members of the Council may participate by telephone)

Council Members present: Barnes; Brown (telephonically); Gad; Oliphant; Wheatley; Vice Mayor Benning and Mayor Barney.

3. Motion to adjourn to Executive Session (to be held in the Saguaro Conference Room of the Municipal Services Building)for the following purposes:

A. Discussion and consultation with the Town Attorney for legal advice and to consider the Town's position and instruct its attorney regarding agreements between the Town and (a) Boys & Girls Club. (ARS 38-431.03(A)(3) and (4).

B. Discussion and consultation with the Town Attorney for legal advice and to consider the Town's position and instruct its attorney regarding development agreement with Wm. Lyon Homes/Church Farms. (ARS 38-431.03(A)(3) and (4).

C. Discussion and consultation with the Town Attorney for legal advice and to consider the Town's position and instruct the staff regarding acquisition of property. (A.R.S. 38-431.03(A)(3) & (7).

D. Discussion and consideration of assignments of Town Manager (A.R.S. §38-431.03(A)(1).

Motion to adjourn to Executive Session at 5:31pm (Benning/Gad/Unanimous)

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The Work Study Session reconvened at 6:40pm.

ITEMS FOR DISCUSSION These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

4. Discussion on municipal financing, economic development tools, tax increment financing and the significance of bond ratings.

Shawn Dralle of RBC Capital Capital Markets, one of the Town's financial advisors, explained municipal bond basics including: general obligation bonds, excise bonds, special districts and also explained the importance of bond ratings. Ms. Dralle provided

additional information on creating community facility districts and bond issuance/repayment and the TIF (tax incremental financing) method which is used in all other states but not allowed under the Arizona Constitution.

5. Presentation and discussion of the results from the economic impact study measuring the economic impact of visitor destinations in the community.

Economic Development Director Doreen Cott thanked the many volunteer groups & individuals who helped with the surveys and introduced Judie Scalise, with ESI, the Town's consultant for the impact study.

Ms. Scalise stated that tourism is a huge economic driver in Arizona and Queen Creek. Ms. Scalise explained that the economic impact study was focused on the arts/entertainment venues in Queen Creek (Barney Sports Complex, Schnepf Farms, Queen Creek Olive Mill, Horseshoe Park & Equestrian Centre and Queen Creek Performing Arts Center). She provided an overview of the study: data gathering; modeling of data – two models were used Queen Creek and Maricopa County; and preparation of an interactive model specific to Queen Creek. Some of the data Ms. Scalise discussed included:

- 478 surveys completed over a five-month period
- Average party size was 2.3 persons
- 18.2% from Queen Creek
- 28.3% required overnight accommodations – Horseshoe Park required the highest
- Spending breakdown

Ms. Scalise provided additional detail on Horseshoe Park events such as lodging, food and tickets.

Ms. Scalise discussed some of the final findings of the survey such as the average spending per person of \$16.78; 268 jobs supported by the venues and the three venues with the biggest impact on Queen Creek were Queen Creek Olive Mill, Horseshoe Park & Equestrian Centre and Schnepf Farms.

6. Discussion on an intergovernmental agreement with the Town of Gilbert for household hazardous waste services.

No discussion at Work Study Session

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7. Adjournment

Motion to adjourn the Work Study Session at 7:20pm (Barnes/Benning/Unanimous)



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Minutes
Regular Session
Queen Creek Town Council
Queen Creek Town Hall, 22350 S. Ellsworth Road
Council Chambers
October 3, 2012
7:00 p.m.

1. Call to Order

The meeting was called to order at 7:25pm.

2. Roll Call (one or more members of the Council may participate by telephone)

Council Members present: Barnes; Gad; Oliphant; Wheatley; Vice Mayor Benning and Mayor Barney. Council Member Brown was absent.

3. Pledge of Allegiance: Led by Mayor Barney

4. Invocation: Pastor Ben Lee, Living Waters Bible Church

5. Ceremonial Matters: Presentations, Proclamations, Awards, Guest Introductions and Announcements.

- Proclamation – Operation Wounded Warrior Weekend October 4-7, 2012

6. Committee Reports

A. Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

Vice Mayor Benning:

Arizona Planning Association Conference September 20-21, 2012: Vice Mayor Benning reported on the conference held in Flagstaff and the sessions he attended.

Maricopa Association of Governments Executive Board - September 26, 2012.

Central Arizona Governments Regional Council – September 26, 2012.

Maricopa Association of Governments – trip to Salt Lake City, UT to discuss modes of public transportation and transit oriented development. Mayor Barney also participated.

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Council Member Wheatley reported on her attendance at the National League of Cities Leadership Summit September 19-21, 2012 in Boston, MA.

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Mayor Barney attended the Maricopa Association of Governments Economic Development Committee on October 2, 2012. Two reports were presented and discussed: Freight Transportation Framework Study and Economic Development Roundtable with the U.S. Department of Commerce.

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B. Partner agencies quarterly or periodic updates to Council. This may include but is not limited to Queen Creek Chamber of Commerce; Queen Creek Performing Arts Center; Boys & Girls Club of East Valley; and Maricopa or Pinal County Board of Supervisors or other governmental agencies. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

None.

7. Public Comment: Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please complete a "Request to Speak Card", located on the table at the rear of the Council Chambers and turn it in to the Town Clerk prior to the beginning of the meeting. There is a time limit of three minutes for comments.

None.

8. Consent Calendar: Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. Public Hearing items are designated with an asterisk (*). Prior to consideration of the Consent Agenda, the Mayor will ask whether any member of the public wishes to remove a Public Hearing item for separate consideration. Members of the Council and or staff may remove any item for separate consideration.

A. Consideration and possible approval of the August 24-25, 2012 Council Retreat Minutes.

B. Consideration and possible approval of the September 19, 2012 Work Study and Regular Session Minutes.

C. Consideration and possible approval of the 3rd Amendment to the Services Contract with In-Pipe Technology Company in the amount not to exceed \$38,800 for sewer odor and corrosion control services.

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D. Consideration and possible approval of Work Order No. 002 to CPC Construction, Inc. (Contract 2011-081) in the amount not to exceed \$31,055.60 for the construction of the Ocotillo Sidewalk Project.

E. Consideration and possible approval of Work Order No. 003 to CPC Construction, Inc. (Contract 2011-081) in the amount not to exceed \$52,250 for construction of the Town Center Sidewalk Gap Improvements Phase 1.

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F. Consideration and possible approval of **DR12-067 “Maracay Homes at Villagio”**, a request by Alex Holmquist of Maracay Homes for approval of six (6) new floor plans with three (3) elevations each to be constructed on 135 lots in the Villagio Subdivision located at the southeast corner of Queen Creek and Sossaman Roads.

G. Consideration and possible approval of the Notice of Intention setting the time (7pm) and the date (December 5, 2012) for the Public Hearing to modify water account service fees and construction water rates. *The Notice of Intent does not include adjustments to residential and commercial utility rates.*

*H. Public Hearing and possible *continuance* of **RZ12-057/SD12-058 Ocotillo Heights, Phase 2**. A continuance to the November 7, 2012 Council Meeting has been requested.

Motion to approve the Consent Calendar as presented
(Wheatley/Barnes/Unanimous)

PUBLIC HEARINGS: If you wish to speak to the Council on an item listed as a Public Hearing, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

9. Public Hearing and possible action on **RZ12-061/SD12-062/DR12-066, “Cielo Noche” – Ordinance 519-12** a request submitted by Greg Davis of iPlan Consulting on behalf of K Hovnanian Homes for a request for rezoning from R1-8 PAD to R1-7 PAD, a preliminary plat for 164 lots on 63 acres in addition to a request for Design Review approval of 7 (seven) floor plans with 3 (three) elevations each. The property is located at the southwest corner of Hawes Road and Queen Creek Road.

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Planner Williams reviewed the rezoning request, preliminary plat and design review for Cielo Noche, a portion of the Emperor Estates masterplan. Mr. Williams discussed the applicant's request for R1-7 PAD zoning; gated community; minimum lot size of 65'x125' and increased lot coverage to 48% for one plan only and an increase to the the garage face plane to 43%. Mr. Williams stated that the preliminary plat and landscape plans are consistent with the original approvals.

Mr. Williams provided additional information on the gated community request, showing the original three interconnections to other parcels and reviewed the gate and wall designs as well as open space amenities that include tot-lots, firepit and armadas.

Mr. Williams presented the building elevations and noted that Plan 5003 is the largest single-story home in the series and the applicant is requesting a lot coverage increase to 48% for this plan only.

Mr. Williams reviewed the public comment at the Planning and Zoning Commission meeting regarding park size, access to open space, concerns with two-story homes adjacent to the open space and the remnant roadway that would not be used. He stated that the Planning and Zoning Commission recommended approval and supports

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the increased garage face plane but believes the Council should address the issue further. Commission's additional recommendation was to improve the appearance of the former interconnections (pavement), which Mr. Williams stated a stipulation was added to address that issue.

Greg Davis, of iPlan, representing the applicant, provided a presentation also. He stated that the project would provide 2.76/dua and 24.8% open space which meets and exceeds the General Plan requirements. He added that the rezoning request wasn't to reduce lot sizes. Mr. Davis highlighted some of the unique features of the proposal:

- Gated community –
- Enhanced entrance features and streetscapes
- Larger buffer landscape tract with shade trees on the southern boundary
- Single-story homes on lots closest to the adjoining neighborhood
- Park amenities

Mr. Davis also addressed the request to increase the garage face plane to 43% which would allow 2x6 construction, architectural elements and more interior garage space. He added the request applies only to certain elevations.

The Public Hearing was opened.

Karen Fabritiis, Queen Creek, (Roman Estates) spoke in support of the development. She stated that she believes the dumping of dirt and debris will stop. She also stated that the developer held several meetings with Roman Estates and feels that a gated community will also benefit Roman Estates by having less traffic through the neighborhood.

The Public Hearing was closed.

Council discussed at length the request for the increase to 43% garage face-plane, asking if not approved whether the product would be redesigned and what the estimated number of floorplan 5003 would be built. Mr. Davis responded that if not approved, the construction would most likely be 2x4 rather than 2x6 and that approximately 30% of the homes in the one parcel plan 5003 is offered would be that plan. Council asked for additional information on how 2x6 construction affects the garage face plane.

Kristin Howe, representing KHovnanian Homes, explained that with 2x6 construction, garage recess & reveal and accommodating the additional architectural features, it doesn't all fit within the 40% requirement.

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There was additional discussion on gated communities, lot coverage and architectural design elements. The possibility of a continuance to allow further discussion on policies & issues was discussed. Additional discussion on gated communities was in regard to traffic calming.

Mr. Davis commented that policies go beyond the proposed project and apply community-wide. He said he would prefer to withdraw the two requests of 43% garage face-plane and 48% lot coverage in order to have the project approved. Council asked for clarification on what would happen to the Plan 5003 if those deviations were removed.

Mr. Davis responded that while a discussion needs to continue on addressing the design standards, the applicant would like a decision on the proposed Cielo Noche.

Council asked if the applicant would be agreeable to removing the gated community request. Mr. Davis requested time to speak with the applicant.

The meeting was recessed from 8:45pm – 8:50pm.

Mr. Davis responded that the gate is a crucial element of the development and requested a two-week continuance to address the other concerns.

Council further discussed prior approvals of gated communities and how the gates were operated.

Motion to approve RZ12-061/SD12-062/DR12-066, “Cielo Noche” – Ordinance 519-12 a request submitted by Greg Davis of iPlan Consulting on behalf of K Hovnanian Homes for a request for rezoning from R1-8 PAD to R1-7 PAD, a preliminary plat for 164 lots on 63 acres in addition to a request for Design Review approval of 7 (seven) floor plans with 3 (three) elevations each with the additional stipulation that Plan 5003 must be redesigned to not exceed 45% lot coverage (Gad) MOTION FAILED DUE TO LACK OF SECOND

Motion to approve RZ12-061/SD12-062/DR12-066, “Cielo Noche” – Ordinance 519-12 a request submitted by Greg Davis of iPlan Consulting on behalf of K Hovnanian Homes for a request for rezoning from R1-8 PAD to R1-7 PAD, a preliminary plat for 164 lots on 63 acres in addition to a request for Design Review approval of 7 (seven) floor plans with 3 (three) elevations with the stipulation that all floorplans comply with the 40% garage face plane and 45% lot coverage (Benning/Oliphant/6-1 (Barnes) MOTION PASSED.

As part of the motion, staff was directed to re-visit garage width and lot coverage definitions and standards. Town Manager Kross requested that staff be given time to bring back design standards for discussion.

FINAL ACTION: If you wish to speak to the Council on an item listed under Final Action, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

10. Discussion and possible approval of **Resolution 910-12** adopting the revised Economic Development Strategic Plan.

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Economic Development Director Doreen Cott reviewed the current strategic plan approved in 2007 and the successes, challenges, opportunities within the community and pilot programs that resulted from the plan. Ms. Cott explained that the proposed revised plan is a 3-year plan and aligns with the Council Strategic Plan and includes more diversification of the economic base and strengthens the Queen Creek brand. Ms. Cott also explained that the Economic Development staff develops action plan/work plan to implement the goals & objectives of the Strategic Plan.

Council discussed the targeted industry sectors and the possibility of adding a new sector that emphasized family/youth/children activity destinations and the type of businesses that typically cluster together in this area.

Motion to approve Resolution 910-12 adopting the revised Economic Development Strategic Plan as presented with the addition a new targeted industry sector “family/youth/children activity destinations”
(Gad/Oliphant/Unanimous)

ITEMS FOR DISCUSSION: These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

11. Discussion on an intergovernmental agreement with the Town of Gilbert for household hazardous waste services.

Management Assistant Ramona Simpson discussed the dangers of improper disposal of household hazardous waste and the Town’s limited programs that include special events several times a year. Ms. Simpson reviewed programs that other cities use and presented a proposal for a pilot program for Queen Creek through an intergovernmental agreement with the Town of Gilbert. Ms. Simpson reviewed the requirements for the “voucher system” and fees charged to the Town, not the resident directly. The program would be available year round at Gilbert’s Southeast hazardous waste collection site at Greenfield and Queen Creek Roads.

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Ms. Simpson said the pilot program has budget funds available in FY12-13 and will be monitored for use/demand in order to budget for the next fiscal year.

Council asked for clarification on whether the resident is required to pay for the voucher. Ms. Simpson responded no, and that the costs for the program are included in the overall solid waste trash program.

Further discussion was in regard to possible misuse of the program by contractors or businesses; the Town’s lack of holding facilities to collect larger amounts of household hazardous waste; and monitoring and reporting of materials dropped off at the collection site.

Town Manager Kross added that more detailed information on the program would be provided.

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Council directed staff to move forward with the pilot program.

12. Motion to adjourn to Executive Session: The Council may reconvene the Executive Session for any of the items listed on the Executive Session Agenda.

Council reconvened to Executive Session at 9:50pm.

13. Adjournment

**Motion to reconvene and adjourn the Regular Session at 10:40pm
(Barnes/Gad/Unanimous)**

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**Minutes
Work Study Session
Queen Creek Town Council**
Queen Creek Town Hall, 22350 S. Ellsworth Road
Council Chambers
October 17, 2012
5:30pm

1. Call to Order

The meeting was called to order at 5:30pm.

2. Roll Call (one or more members of the Council may participate by telephone)

Council Members present: Barnes; Brown; Gad; Oliphant; Wheatley; Vice Mayor Benning and Mayor Barney.

3. Motion to adjourn to Executive Session (to be held in the Saguaro Conference Room of the Municipal Services Building) for the following purposes:

A. Discussion and consultation with the Town Attorney for legal advice with the Town's Attorney and representatives regarding the sale or lease of 20-acre parcel in Town Center. A.R.S. 38-431.03(A)(3), (4) and (7).

B. Discussion and consultation with the Town Attorney for legal advice and to consider the Town's position and advise its attorney regarding pending or contemplated litigation: Queen Creek v. Astrue-Case 2:11-cv-0042; Dominguez v. Town of Queen Creek (Lloyd); Ackert v. State of Arizona, Pinal County, Maricopa County, City of Apache Junction, San Tan Valley and Town of Queen Creek (Notice of Claim). A.R.S. 38-431.03(A)(3).

C. Discussion and consideration of assignments of Town Manager (A.R.S. §38-431.03(A)(1)).

Motion to adjourn to Executive Session at 5:31pm (Benning/Barnes/Unanimous)

The Work Study Session reconvened at 6:30pm.

ITEMS FOR DISCUSSION These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

4. Presentation on the SB1598 compliance project – "Time Frames".

Continued to the November 7, 2012 Council meeting.

5. Presentation by Barry Broome of Greater Phoenix Economic Council (GPEC).

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Economic Development Director Cott introduced Barry Broome, President & CEO of Greater Phoenix Economic Council (GPEC) and Jason Barney, the Town's representative to the GPEC Board.

Mr. Barney provided some brief remarks regarding his participation with GPEC and the initiatives that are being brought forward locally and regionally. He also commented on the resources available from GPEC.

Mr. Broome remarked on Queen Creek's thoughtful, planned growth and that by cities/towns working together regionally to promote economic development, competitiveness (community vs. community) can be avoided. Mr. Broome continued with an overview and discussion on GPEC's Strategic Plan and the return on investment to Queen Creek from GPEC. There was additional discussion on different ways to drive the economy including retail vs. construction.

6. Adjournment

The meeting was adjourned at 7:01pm.

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Minutes
Regular Session
Queen Creek Town Council
Queen Creek Town Hall, 22350 S. Ellsworth Road
Council Chambers
October 17, 2012
7:00 p.m.

1. Call to Order

Mayor Barney called the meeting to order.

2. Roll Call (one or more members of the Council may participate by telephone)

Council Members present: Barnes; Brown; Gad; Oliphant; Wheatley; Vice Mayor Benning and Mayor Barney.

3. Pledge of Allegiance: Led by Skylar Mayhew, Scout Troop 82

4. Invocation: Pastor Aaron Pennington – Central Christian Church – Queen Creek

5. Ceremonial Matters: Presentations, Proclamations, Awards, Guest Introductions and Announcements.

Mayor Barney read the following proclamation:

- Proclamation – Arizona Cities & Towns Week October 22-26, 2012
- Presentation of ICMA (International City/County Management Association) Award for Performance Measurement

Mayor Barney and Town Manager Kross presented Kevin Johnson, Bruce Gardner, Samantha McPike, Wendy Kaserman, Tracy Corman, Traci Polk and Joe LaFortune with the ICMA (International City/County Management Association) Certificate of Distinction Award for Performance Measurement and commended them on the Town's achievement of achieving the 2nd level of the award.

6. Committee Reports

A. Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

Mayor Barney reported on the following meetings:

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East Valley Mayor's Luncheon – October 11, 2012: these meetings are held every other month to discuss issues facing the East Valley communities.

Maricopa Association of Governments Executive Committee – October 15, 2012: The committee discussed expanding MAG's planning area boundaries and the negative outcome to Arizona's aerospace and aviation industries if sequestration takes place. The next meeting is November 19, 2012.

Governor's Transaction Privilege Tax Task Force – October 15, 2012: Updates were given by three work-groups of the Task Force: State & Local Standardization, Online Retail and Contracting. An overview of construction sales tax was also given.

Phoenix-Mesa Gateway Airport Authority – October 15, 2012: The East Valley Partnership gave a presentation on the "Gateway Next" project – a follow-up to the 2006 ULI report for the Williams Gateway area; and the Board approved the recruitment process for hiring a new Executive Director. The next meeting is November 19, 2012.

B. Partner agencies quarterly or periodic updates to Council. This may include but is not limited to Queen Creek Chamber of Commerce; Queen Creek Performing Arts Center; Boys & Girls Club of East Valley; and Maricopa or Pinal County Board of Supervisors or other governmental agencies. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

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- Queen Creek Chamber of Commerce – 1st Quarter Report

Marquis Scott, Executive Director of the Chamber, reviewed the 1st Quarter highlights including luncheon/mixer presenters; preparations for the Chamber's move to new offices along with the QC Incubator; 2012 membership drive and upcoming events.

- Queen Creek Performing Arts Center – 1st Quarter Report

Molly Jacobs, Director of QCPAC, thanked the Town, Queen Creek School District and Queen Creek Cultural Foundation for the support given to the Arts Center and reported on event attendance, upcoming movie night series, Community Theatre auditions and show schedule.

C. Town Center Committee – October 10, 2012: Council Member Barnes reported on the Committee's approval of Façade Improvement Program applications for Queen Creek Veterinary Clinic and Mountain View Funeral Home; discussion and approval of the Old Town Queen Creek Alliance banner proposal which will be forwarded to the Town Council for possible approval; and the discussion on Queen Creek's historically significant buildings. The next meeting is November 14, 2012.

D. Transportation Advisory Committee – October 11, 2012: Committee Chair Ryan Nichols reported on presentations and discussion on the Transit Planning scope of work

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Page 3**

and Small Area Transportation Study (SATS). There was also review and discussion on several design concepts for Meridian Road. The next meeting is November 8, 2012.

7. Public Comment: Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please complete a "Request to Speak Card", located on the table at the rear of the Council Chambers and turn it in to the Town Clerk prior to the beginning of the meeting. There is a time limit of three minutes for comments.

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Chad Cummard, Queen Creek, representing Little League, discussed his concerns with the fee increases for sports partners and requested that the fees be reconsidered. Mr. Cummard stated that the League would like to host a national tournament but would be unable to get the scoreboards necessary because of the increased fees.

Jason Henry, San Tan Valley, representing QC Heat, discussed his concerns with the fee increases. He stated that QC Heat is the largest softball league in the state and registration fees will have to be increased \$20-25 as a result. Mr. Henry said he would prefer a gradual increase.

8. Consent Calendar: Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. Public Hearing items are designated with an asterisk (*). Prior to consideration of the Consent Agenda, the Mayor will ask whether any member of the public wishes to remove a Public Hearing item for separate consideration. Members of the Council and or staff may remove any item for separate consideration.

A. Consideration and possible approval of the appointment of Dennis Brierton and Perry Rea to the Economic Development Commission.

B. Consideration and possible approval of **Resolution 919-12** amending the Standard Form By-laws for Town Committees, Boards, and/or Commissions; Section II(B) Appointment of Town Council Members and Committee Chair; and Section II(D) minimum and maximum number of committee members.

C. Consideration and possible approval of an amendment to the service agreement with Orange Screen Productions, LLC (Contract 2010-056) in an amount not to exceed \$9,600 for the filming and broadcasting services of the Town Council Work Study Sessions.

DRAFT

**Motion to approve the Consent Calendar as presented
(Wheatley/Benning/Unanimous)**

PUBLIC HEARINGS: If you wish to speak to the Council on an item listed as a Public Hearing, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

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Queen Creek Town Council
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9. Public Hearing and possible action on **RZ12-054/SD12-055/DR12-069, “The Preserve at Hastings Farms” – Ordinance 521-12** a request submitted by Greg Davis of iPlan, for rezoning from R1-43, R1-18 and R1-7 PAD to R1-7 PAD and R1-9 PAD; a preliminary plat for 344 lots on 147 acres in addition to a request for Design Review approval of seven (7) floor plans with three (3) elevations each to be constructed on Parcel D. The property is located on the north side of Cloud Road at the Crismon Road alignment.

Planner Williams reviewed the proposal for rezoning with PAD, preliminary plat and design review for “The Preserve at Hastings Farms”. Mr. Williams explained that the current approved density of 2.3/dua would increase to 2.45/dua which is still in compliance with the General Plan. Mr. Williams reviewed the proposed lot sizes and distribution throughout the parcels; location of the equestrian trail; and reviewed the elevations of the proposed homes for Parcel D. He stated that the applicant is not requesting any changes to the design standards and the Planning and Zoning Commission recommended approval.

Council discussed the current size of lots in comparison to the request and landscape buffer tract. There was also discussion on the number of lots along the Queen Creek Wash and whether two-story homes would be allowed. Mr. Williams responded that one in three homes would be allowed adjacent to the wash as in the original approval. He added that the open space tract along the Wash had already been dedicated to the Town. Council also asked for clarification on the type of fencing proposed. Staff responded view fence is required along the wash.

Greg Davis, of iPlan, representing the applicant (Circle G & Maracay Homes) gave a presentation on the request which would increase the lots from 193 to 344 and the open space provided would be 27%. Mr. Davis stated that the revised plan provides for better vehicle and pedestrian circulation, trail connections and additional open space with enhanced amenities. He also discussed the stipulation regarding the 8ft. multi-use trail and the flexibility available for the final alignment and platting.

Mr. Davis commented that the changing market is the focus the requested changes and believes that the requests are balanced with the additional open space provided and overall theme of Hastings Farms.

The Public Hearing was opened.

DRAFT

Keith Pharr, Queen Creek, spoke in support of the trail through Hastings Farms and the interconnection with the Queen Creek Wash, which he believes is a huge amenity to the Town.

The Public Hearing was closed.

Council asked the applicant for more information on the lot sizes and side entry garages. Mr. Davis explained that at the time the original rezoning was approved, a

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Page 5**

specific housing product was not identified. He also addressed the side entry garages and stated that they would be for specific lots only.

Council also commented on the location of the equestrian trail being more appropriate at the eastern boundary rather than through the middle of the subdivision. Council asked Mr. Pharr to offer his preference on the location. Mr. Pharr responded further east would be preferable.

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Council had further discussion on increased density; changing the look & feel of the subdivision and setbacks and purpose of front porches. Mr. Davis responded that lighting would be provided along the pathways and by streetlights. Traffic calming measures were also discussed. Mr. Davis showed where roundabouts would be located at intersections.

Mr. Davis provided clarification that the request for front-yard setback is not a deviation, but only applies to the front porch. Council asked if this request applied to Plan 5521 and whether it would apply to the optional side entry garage.

Motion to approve RZ12-054/SD12-055/DR12-069, “The Preserve at Hastings Farms” – Ordinance 521-12 for rezoning from R1-43, R1-18 and R1-7 PAD to R1-7 PAD and R1-9 PAD; a preliminary plat for 344 lots on 147 acres in addition to a request for Design Review approval of seven (7) floor plans with three (3) elevations each to be constructed on Parcel D (Hastings Farms-Maracay Homes) (Barnes/Wheatley/6-1 – Brown) MOTION PASSED.

FINAL ACTION: If you wish to speak to the Council on an item listed under Final Action, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

Mayor Barney declared a conflict of interest and stepped down from the dais. Vice Mayor Benning conducted this part of the meeting.

10. Consideration and possible approval of **Ordinance 520-12** authorizing the exchange of 127 acres of Town-owned property located at Queen Creek Road east of Signal Butte Road for a 127-acre parcel of real property located north of the northeast corner of Queen Creek Road and Merrill Road, owned by the Barney Family Sports Complex, LLLP, for the purpose of a beneficial location for a possible future park site.

Assistant Town Manager Flynn introduced this item as being a land use, transportation, road alignment and development issue.

DRAFT

Planning Administrator Balmer gave a presentation that included the location of the two 127-acre parcels; preliminary designs to ensure the planned recreational facilities would fit on the “new” parcel and still allow for the Public Works Yard and possible future fire station to be located as well. The costs to the Town and to the Barney Family were reviewed. Mr. Balmer added that the exchange would benefit the Town with frontage

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access from Signal Butte and Merrill Roads; a more useable parcel; better access to SR 24 and provide employment/retail opportunities nearer the freeway. He also discussed the benefits to the Barney Family of having a larger parcel to develop with more flexibility and better street planning.

Council asked for clarification on the location of the Barney Sports Complex relative to the new park site; cost share of road improvements to Signal Butte Road and discussed the mutual benefits of the land swap.

Motion to approve Ordinance 520-12 authorizing the exchange of 127 acres of Town-owned property located at Queen Creek Road east of Signal Butte Road for a 127-acre parcel of real property located north of the northeast corner of Queen Creek Road and Merrill Road, owned by the Barney Family Sports Complex, LLLP, for the purpose of a beneficial location for a possible future park site (Oliphant/Benning/Unanimous (6-0))

ITEMS FOR DISCUSSION: These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

None.

11. Motion to adjourn to Executive Session: The Council may reconvene the Executive Session for any of the items listed on the Executive Session Agenda.

None.

DRAFT

12. Adjournment

Motion to adjourn at 8:36pm (Barnes/Brown/Unanimous)

Requesting
Department:

Development Services



TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, TOWN MANAGER

FROM: TROY WHITE, PUBLIC WORKS DIVISION MANAGER

RE: CONSIDERATION AND POSSIBLE APPROVAL OF AMENDMENT NO. 1 TO THE IGA WITH THE MARICOPA COUNTY FLOOD CONTROL DISTRICT FOR THE CONSTRUCTION OF THE SONOQUI WASH PHASE II (IGA FCD 2009A011A) EXTENDING THE TOWN’S REIMBURSEMENT PAYMENTS TO JULY, 2016.

DATE: NOVEMBER 7, 2012

Staff Recommendation:

Staff recommends approval of Amendment No. 1 to IGA 2009A011A with the Maricopa County Flood Control District for the Construction of Sonoqui Wash Phase II extending the Town’s reimbursement payments to July, 2016.

Relevant Council Goal:

Regional Partnerships and Town Financial Stability.

Proposed Motion:

Motion to approve Amendment No. 1 to IGA 2009A011A with the Maricopa County Flood Control District for the Construction of Sonoqui Wash Phase II extending the Town’s reimbursement payments to July, 2016.

Discussion:

The Sonoqui Wash Floodplain Delineation Study from Higley Road to Hunt Highway indicated that significant ponding and breakouts of flood flows occur along the wash. Results from the Sonoqui Wash Hydraulic Master Plan indicated that the most feasible solution to contain the breakouts from Sonoqui Wash was to increase the conveyance cross-section to contain the 100-year flood flows. Phase I of the project included channelization of Sonoqui Wash from Queen Creek Wash to upstream of Chandler Heights Road and associated improvements. Phase I was completed with a partnership between Queen Creek, the Town of Gilbert and the Maricopa County Flood Control District (the “District”).

Phase II of Sonoqui Wash channelization (the "Project") is from south of Chandler Heights Road to Riggs Road, and along Riggs Road to the east side of Crismon Road. The Project is geographically divided in two sections: the downstream portion of Phase II, from Chandler Heights Road to the west side of Ellsworth Road is designated Phase IIA; the upstream portion from Ellsworth Road east to the upstream end of the project approximately 300 feet east of Crismon Road, including the box culvert under Ellsworth Road, is designated Phase IIB.

On December 16, 2009 the Town Council approved IGA 2009A011 between the Town and the District for the design, rights-of-way acquisition, utility relocations, construction, construction management, operation and maintenance of the Project. The Project was turned over to the Town when completed for ownership, operation and maintenance.

Due to limited available funding at the time of approval of the IGA, Queen Creek's cost share cash contribution for Phase IIA construction was limited to the utility relocation expenses. The remainder of the Town's cost share is to implement Phase IIB at no cost to the District.

During the Phase IIA Project, the District incurred utility relocation expenses of \$1,137,292.99 for the Project, and after crediting the Town for rights-of-way acquisitions (valued at \$383,878.00), the Town is responsible to reimburse the District \$753,414.99. IGA 2009A011 affords the Town the option to defer reimbursement of these costs for thirty-six months from date of invoice, making the payment due August 1, 2014.

Due to the extended economic recession, the Town is requesting the repayment for utility relocations be spread out over a three-year period. The District has mutually-agreed to the following repayment alternative:

- Payment of fifty (50) percent of the utility relocation expense, \$376,707.50, in July 2014.
- Payment of twenty-five (25) percent of the utility relocation expense, \$188,353.75, in July 2015.
- Payment of remainder of the utility relocation expense, \$188,353.74, in July 2016.

Fiscal Impact:

This amendment will afford the Town an additional two years to repay \$376,707.49 of the \$753,414.99 total cost of the utility relocations.

Alternatives:

Council could elect to stay with the current repayment plan of the full amount in August of 2014.

Attachments:

IGA

When Recorded Return to:
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009-6399

**AMENDMENT NO.1
IGA FCD 2009A011A**

TO

**INTERGOVERNMENTAL AGREEMENT
IGA FCD 2009A011**

between

THE TOWN OF QUEEN CREEK

and the

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

for the

**RIGHTS-OF-WAY ACQUISITION, UTILITY RELOCATIONS, CONSTRUCTION, CONSTRUCTION
MANAGEMENT, AND OPERATION AND MAINTENANCE**

of the

SONOQUI WASH CHANNELIZATION PROJECT PHASE II

Agenda Item _____

This Amendment No. 1, also known as Intergovernmental Agreement (IGA) FCD 2009A011A, to IGA FCD 2009A011 (the "Original IGA") is entered into by and between the Town of Queen Creek, an Arizona municipal corporation, acting by and through its Town Council hereinafter called QUEEN CREEK, and the Flood Control District of Maricopa County, a municipal corporation and political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter called the DISTRICT. The DISTRICT and QUEEN CREEK are hereinafter collectively called the PROJECT PARTNERS.

This Amendment No. 1 shall become effective as of the date it has been executed by all parties and will be recorded by the Maricopa County Recorder.

STATUTORY AUTHORIZATION

1. The DISTRICT is empowered by Arizona Revised Statutes (A.R.S.) Section 48-3603, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the DISTRICT.
2. QUEEN CREEK is empowered by A.R.S. Section 11-952 and has authorized the undersigned to execute this Agreement on behalf of QUEEN CREEK.

BACKGROUND

1. The DISTRICT's Sonoqui Wash Floodplain Delineation Study from Higley Road to Hunt Highway indicated that significant ponding and breakouts of flood flows occur along the wash. Results from the DISTRICT's Queen Creek and Sonoqui Wash Hydraulic Master Plan indicated that the most feasible solution to contain the breakouts from Sonoqui Wash was to increase the conveyance cross-section to contain the 100-year flood flows. Phase I of the project included channelization of Sonoqui Wash from Queen Creek Wash to upstream of Chandler Heights Road and associated improvements. Phase I was completed with partnership between the Towns of Gilbert and QUEEN CREEK and the DISTRICT.
2. Phase II of Sonoqui Wash channelization is from south of Chandler Heights Road to Riggs Road, and along Riggs Road to the east side of Crismon Road, hereinafter referred to as the PROJECT. See attached Exhibit A. The PROJECT is geographically divided in two sections: the downstream portion of Phase II, from Chandler Heights Road to the west side of Ellsworth Road is designated Phase IIA; the upstream portion from Ellsworth Road east to the upstream end of the project approximately 300 feet east of Crismon Road, including the box culvert under Ellsworth Road, is designated Phase IIB.
3. On March 21, 2001, the Board of Directors of the DISTRICT adopted Resolution FCD 2001R001 (C-69-01-061-6-00), authorizing the DISTRICT to cost-share in the PROJECT, and to negotiate Intergovernmental Agreements for the design, rights-of-way acquisitions, construction, construction management, and operation and maintenance of the PROJECT.
4. On August 20, 2008, the Board of Directors of the DISTRICT approved Intergovernmental Agreement FCD 2008A008 (C-69-09-008-3-00) between the DISTRICT and QUEEN CREEK, for the design and utility relocations of the PROJECT.
5. On January 27, 2010, the Board of Directors of the DISTRICT approved IGAs FCD 2008A008A (C-69-09-009-3-01) and FCD 2009A011 (C-69-10-053-3-00) between the DISTRICT and the Town of Queen Creek for the design, rights-of-way acquisition, utility relocations, construction, construction management, operation and maintenance of the PROJECT, including a crossing at Riggs Road. Per the terms of these IGAs, the PROJECT will be turned over to QUEEN CREEK for ownership, operation and maintenance following completion. Due to QUEEN CREEK's limited available funding at the time of approval of the IGA, QUEEN CREEK's cost share cash contribution for Phase IIA construction was limited to the utility relocation expenses. The remainder of QUEEN CREEK's cost share is to implement Phase IIB at no cost to the DISTRICT.
6. The DISTRICT incurred utility relocation expenses of \$1,137,292.99 for the PROJECT, and after crediting QUEEN CREEK for rights-of-way acquisitions (\$383,878.00) per the terms of the Original IGA, QUEEN CREEK is responsible to reimburse the DISTRICT \$753,414.99 but has the option to defer reimbursement of these costs for thirty-six months per the terms of the IGA.
7. Financial constraints have prohibited QUEEN CREEK from meeting the terms of the Original IGA related to reimbursement of utility relocations. The DISTRICT and QUEEN CREEK have negotiated this amendment as a mutually-agreeable alternative.

PURPOSE OF THE AGREEMENT

8. The purpose of this Amendment No. 1 is to amend the Original IGA by deleting paragraph 15.4 thereof regarding reimbursement by QUEEN CREEK of DISTRICT expense for utility relocations and to restructure the reimbursement schedule pursuant to the terms set forth in this Amendment No. 1.

TERMS OF AGREEMENT

9. Paragraph 15.4 of the Original Agreement is hereby deleted, and replaced by the terms of this Amendment No. 1, setting forth new terms for the reimbursement of utility relocations.
10. The DISTRICT shall:
 - 10.1 Invoice QUEEN CREEK for fifty (50) percent of the utility relocation expense, \$376,707.50 (estimated), in July 2014.
 - 10.2 Invoice QUEEN CREEK for twenty-five (25) percent of the utility relocation expense, \$188,353.75 (estimated), in July 2015.
 - 10.3 Invoice QUEEN CREEK the remainder of the utility relocation expense, \$188,353.74 (estimated), in July 2016.
11. QUEEN CREEK shall:
 - 11.1 Reimburse the DISTRICT within thirty (30) days of receipt of each of the Invoices set forth in Section 10.
 - 11.2 Be responsible for addressing the safety and appropriateness of any non-flood control uses of the PROJECT prior to offering to make or making the PROJECT available for such uses.

12. INDEMNIFICATIONS.

- 12.1 Paragraph 16.18 of the Original IGA, providing that the Town will be liable for and indemnify the District harmless for non-flood control uses is hereby deleted.
- 12.2 Paragraph 25 of the Original IGA is revised to read (new language underlined):

Except as to the claims described in Paragraph 12.3 of this Amendment No. 1, each party to this Agreement (indemnitor) shall, to the extent permissible by law, indemnify, defend and hold harmless the others (indemnitees) including agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of indemnitor's negligent or wrongful acts or omissions pursuant to this Agreement. Such indemnification obligation shall encompass any personal injury, death or property damages resulting from the indemnitor's negligent or wrongful acts or omissions, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the indemnitee. Indemnitee shall be liable for its own negligence or wrongful acts as provided by law.

- 12.3 The following new provision is added to the Indemnification in Paragraph 25 of the Original IGA, as amended by this Amendment No. 1:

In the event that QUEEN CREEK (indemnitor) makes the property affected by the PROJECT available for any non-flood control uses, whether public or private uses, QUEEN CREEK shall, to the extent permissible by law, indemnify, defend and save harmless the DISTRICT, including agents, officers, directors, governors and employees thereof (indemnitees), from any loss or expense incurred as a result of a claim or suit arising out of such non-flood control uses. Such indemnification obligation is intended to be a specific indemnity obligation rather than the general indemnity obligations set forth in Paragraph 25 of the Original IGA, as amended by this

Amendment No. 1, and shall encompass any personal injury, death or property damages, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense of such claims or litigation except as otherwise stated in this Section 12.3.

13. Except as amended by this Amendment No. 1, the Original IGA shall remain in full force and effect. In the event of any conflict between this Amendment No. 1 and the Original IGA, the terms of this Amendment No. 1 shall govern.
14. The paragraph numbering in this Amendment No. 1 is coincidental and is not intended to indicate that these same numbered paragraphs in the Original IGA are hereby replaced or revised.
15. Attached to this Amendment No. 1 or contained herein are the written determinations by the appropriate attorneys for the parties to this Amendment No. 1, that these agencies are authorized under the laws of the State of Arizona to enter into this Amendment No. 1 and that it is in proper form.
16. If legislation is enacted after the effective date of this Amendment No. 1 that changes the relationship or structure of one or more parties to this Amendment No. 1, the parties agree that this Amendment No. 1 shall be renegotiated at the written request of either party.
17. This PROJECT has been planned and designed to meet the recurrence level of the 100-year flood and this recurrence level is specifically approved by the Board of Directors of the Flood Control District of Maricopa County.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
A Municipal Corporation

Recommended by:

Timothy S. Phillips, P.E. Date
Chief Engineer and General Manager

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

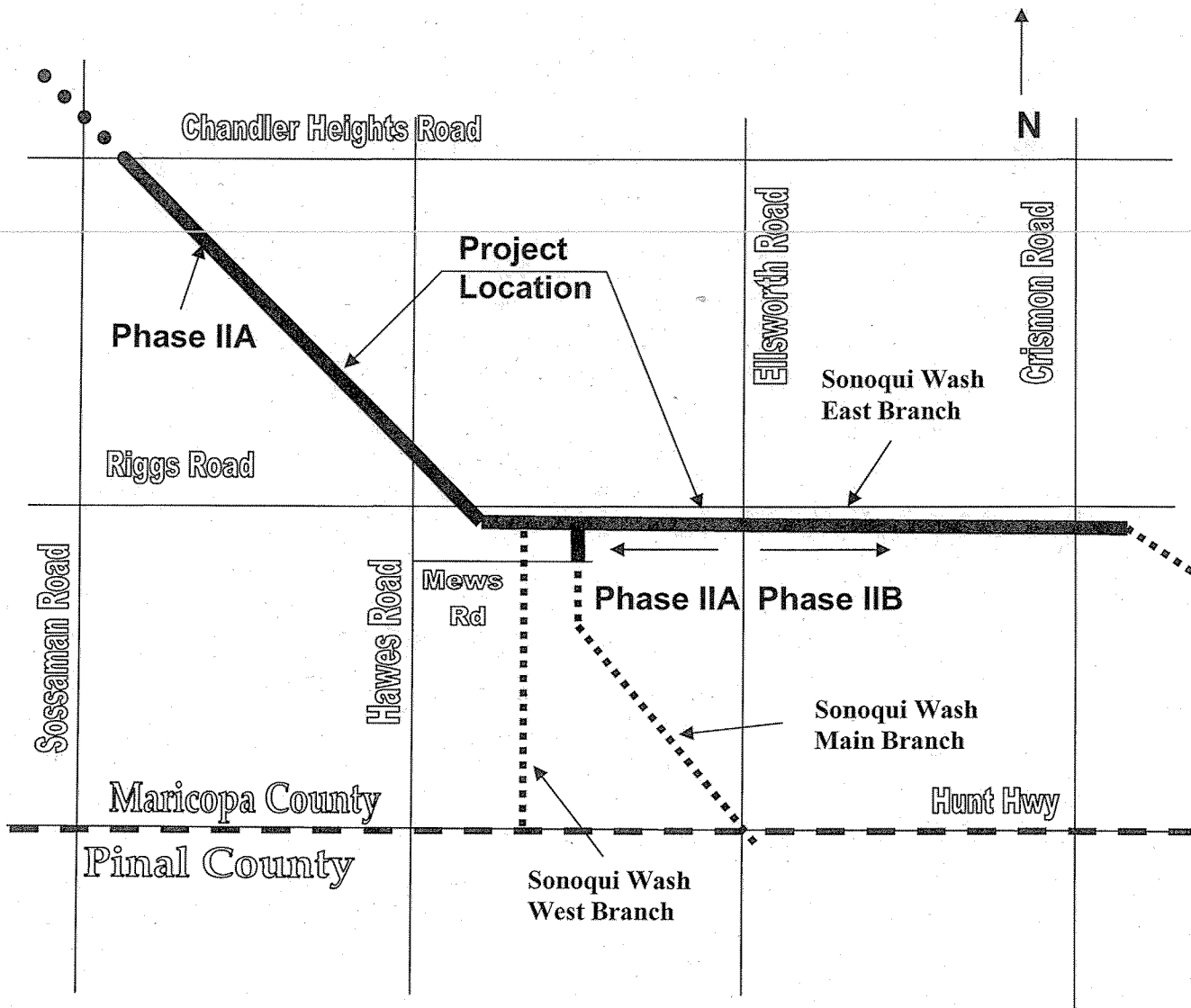
Attest:

By: _____
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD 2009A011A has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned Flood Control General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

Flood Control General Counsel Date

EXHIBIT A
Vicinity Map
IGA FCD 2009A011A





Requesting Department:

Development Services

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, TOWN MANAGER

**FROM: TROY WHITE, PUBLIC WORKS DIVISION MANAGER
JAN MARTIN, STREETS AND ENVIRONMENTAL SERVICES
SUPERINTENDENT**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF CONTRACT
WITH H-GAC/CRAFICO FOR SS125 MELTER/CRACK SEALER
DIESEL COMPRESSOR IN THE AMOUNT OF \$52,482.55**

DATE: NOVEMBER 7, 2012

Staff Recommendation:

Staff recommends approval of the attached contract with H-GAC/CRAFICO for the purchase of a SS125 melter/crack sealer diesel compressor in the amount of \$52,482.55.

Relevant Council Goal(s):

KRA 5, Goal 2: The equipment will be used in performing the preventive maintenance described in our annual Pavement Management Program.

Proposed Motion:

Motion to approve the contract with H-GAC/Crafco for SS125 melter/crack sealer diesel compressor in the amount of \$52,482.55.

Discussion:

The purchase of the equipment was approved by Council on May 2, 2012 as part of the annual Pavement Management Plan and subsequently approved by Council again as part of the Fiscal Year 2013 annual budget. Staff is now requesting approval of the contract with H-GAC/CRAFICO so the equipment can be procured.

Currently, staff must rent the necessary equipment in order to perform pavement crack sealing operations needed annually throughout Town. The annual cost of renting the equipment averages \$12,000 - \$15,000; therefore, the break-even point for purchasing the equipment is 3-4 years. Additionally, over the past 2-3 years staff has had difficulty finding this piece of equipment for rent. Larger cities

such as Phoenix and Mesa have priority timing with rental agencies due to the size of their operations. Therefore, Town staff is left scrambling to complete our crack sealing operations before the end of the weather season (crack sealing operations are temperature dependant).

Crack sealing is the process of filling in cracks in pavement caused by aging and weathering. Crack sealing prevents water from getting into the subgrade, which causes the road base to fail and form potholes. As part of a Preventive Maintenance Program, crack sealing is critical and the least expensive method of road maintenance.

Fiscal Impact:

Funding for the purchase of this equipment was approved for this Fiscal Year and is in the Highway User Revenue Fund account.

Alternatives:

Council could elect to not purchase this equipment and direct staff to continue renting the equipment as part of the annual crack sealing operations.

Attachments:

A: Contract as End User of H-GAC Cooperative Purchase No. SM10-12.

TOWN OF QUEEN CREEK

**EQUIPMENT PURCHASE CONTRACT AS END USER OF H-GAC COOPERATIVE
PURCHASE NO. SM10-12**

This Contract is made and entered into effective as of the ____ day of October, 2012 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town" or "End User" or "Member"), and Crafc0, Inc. an Arizona corporation ("Vendor" or "Contractor"). Town and Vendor may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

RECITALS

The Town wishes to enter into a contract to purchase a Crafc0 SS125 Melter/Diesel Compressor, hitch and accessories from Vendor; and

Town is a member of the cooperative purchase program by contract with the Houston-Galveston Area Council of Governments ("H-GAC") and Town is an authorized participant in Vendor's Response to H-GAC Bid No. SM10-12 for street maintenance equipment (the "H-GAC RFP"); and

Vendor entered a street maintenance equipment contract with H-GAC dated October 1, 2012 (the "Original Contract", attached hereto as **Exhibit "B"**); and

The Original Contract between Vendor and H-GAC expressly authorizes the Town to enter an "End User Agreement" with the Vendor as part of Town's participation in purchasing street maintenance equipment from Vendor; and

The Mayor is authorized and empowered by the Town Code to execute contracts for the purchase of goods.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

AGREEMENTS

ARTICLE 1. GOODS

1. Vendor shall provide the equipment described in the **Exhibit "C"** attached hereto (the "Goods"). All Goods received are subject to inspection, approval, and acceptance by the Contract Administrator to determine compliance with any requirements for the Goods. Inspection, approval and acceptance by the Contract Administrator shall not relieve Vendor of any liability for defective, non-conforming or inadequate Goods provided pursuant to this Contract.

2. All Goods shall be in current and ongoing production; shall have been formally announced for general marketing purposes; and shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications

and requirements set forth in this contract, the H-GAC RFP and the Original Contract.

3. The Vendor shall be responsible for industry standard shipping and packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number. All Goods (e.g. equipment, material, supplies, as opposed to services), shall be new, unused, and not refurbished. All Goods shall be available for inspection and demonstration at any time prior to or after procurement.

4. All terms, conditions and specifications contained in the H-GAC RFP Invitation No. SM10-12, including, but not limited to, Section A, General Terms & Conditions, and Section B, Product/Service Specific Requirements & Specifications (Final), Vendor's Response to the H-GAC RFP, and the Original Contract are hereby referenced and incorporated herein.

ARTICLE 2. PAYMENT FOR GOODS

1. The Vendor shall provide to the Town the goods and merchandise listed on **Exhibit "C"** (the "Goods"), attached hereto and made a part hereof by reference, at the prices listed therein, all as more specifically set forth in the H-GAC RFP and the Original Contract. The amount paid to Vendor under this Contract shall not exceed \$55,000.00 (includes estimated purchase price of \$48,237.64 plus sales tax allowance). Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a Town Purchase Order or use of a Town Procurement Card.

2. Vendor shall be paid according to the terms set forth in **Exhibit "C"**.

3. The Town will make every effort to process payment for the purchase of Goods within thirty (30) calendar days after receipt, approval and acceptance (as defined by the H-GAC RFP) of the Goods and a correct notice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. A Town issued written Purchase Order ("Purchase Order") is required prior to any Goods being accepted by the Town. A Town purchasing card is an acceptable method of payment.

4. If for any reason the Vendor fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the H-GAC RFP or Original Contract, the Town may withhold from payment due to the Vendor such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Vendor is agreed to by the parties in writing, or is finally determined by a court of competent jurisdiction.

5. All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

ARTICLE 3. FITNESS AND DELIVERY

1. The Vendor warrants that All Goods (e.g. equipment, material, supplies, as

opposed to services) supplied to Town shall fully conform to all requirements of the Contract and all representations of Vendor, and shall be fit for all purposes and uses required by the Contract.

2. All prices are F.O.B. Destination and include all delivery and unloading at the Town specified destination. Vendor shall provide all necessary equipment and shall retain title and control of all goods until they are delivered and accepted by Town. All risk of transportation and all related charges shall be the responsibility of Vendor.

3. The Vendor shall bear all loss of conforming Goods covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Vendor regardless of receipt.

ARTICLE 4. TERM OF CONTRACT

1. This Contract shall be in full force and effect when approved by the Town Council of Queen Creek, Arizona and signed by its Mayor as attested by the Town Clerk. This Contract is not an exclusive contract for providing the Goods to the Town, and Vendor shall have no right to receive a specific Purchase Order from the Town, nor shall have any right to any compensation or payment of any kind if the Town receives Goods, or contracts to receive Goods, from another source or vendor.

2. In the event that delivery cannot be completed within the time specified in a specific Purchase Order, the Contract Administrator may, in their sole discretion, approve a written extension of the time for delivery of the Goods, or contract with another provider for the Goods.

3. The term of this contract shall commence on the Effective Date and shall continue until the date of completion of all applicable warranty periods for the Goods.

ARTICLE 5. TERMINATION OF CONTRACT

1. The Town has the right to terminate this Contract for cause or convenience, or to terminate any portion of a specific Purchase Order that has not been delivered to the Town by the Vendor or accepted by the Town.

2. In the event the Town terminates this Contract or any Purchase Order as herein provided, the Town shall notify the Vendor in writing, and immediately upon receipt of such notice, the Vendor shall discontinue all work under this Contract.

3. Upon such termination, the Vendor shall immediately deliver to the Town any and all documents or work product generated by the Vendor under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, if any. Vendor shall be responsible only for such portion of the Goods as has been delivered to, and accepted by, the Town.

4. The Vendor shall receive payment as set forth on Article 2 as compensation in full for Goods actually received, approved, and accepted by the Contract Administrator prior to the

date of such termination only.

ARTICLE 6. ASSIGNMENT

This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

ARTICLE 7. WARRANTY

1. The Vendor shall be responsible for, and shall and hereby does warrant that all Goods provided shall: (i) be new; (ii) be of good quality and manufacture; (iii) conform to the requirements of this Contract and the specific Purchase Order (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects in material, workmanship, or design; (v) be fit for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statues and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules, regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Vendors' and manufacturers' warranties applicable to the Goods running in favor of the Town. All Goods shall carry the manufacturer's and dealer's standard warranty.

2. Copies of all applicable manufacturers' warranties shall be delivered to the Town with or before delivery of the Goods to the Town. The Contract Administrator may at any time require Vendor to deliver to the Contract Administrator written warranties from the Vendor and/or the manufacturers of the Goods for review and approval by the Town. These warranties shall be in form and content satisfactory to the Town and any other person reasonably requested by the Town, or the Town's lender(s). If the Vendor fails to deliver such warranties, or if the warranties are determined by the Contract Administrator to be inadequate or unacceptable, the Vendor will be considered to be in material breach of this Contract.

3. Immediately upon notice from the Contract Administrator thereof, Vendor shall correct or replace as required by the Contract Administrator, at Vendor's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Goods. The Town's acceptance or approval of the Goods shall in no way relieve the Vendor of any of Vendor's responsibilities hereunder. Unless a longer period is provided in the Contract, the Vendor's or manufacturers' written warranties, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Goods.

ARTICLE 8. TOWN'S CONTRACTUAL REMEDIES

1. The rights and the remedies of Town under this contract are not exclusive.

2. Goods supplied under this contract shall fully comply with this contract and the specifications included herein. The delivery of Goods that do not fully comply constitutes a material breach of contract. On delivery of nonconforming Goods, Town may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its

rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

3. Town shall be entitled to offset against any sums due to Vendor, any expenses or costs incurred by Town, or damages assessed by Town concerning Vendor's non-conforming performance or failure to perform the Contract, including costs and damages incurred by Town.

ARTICLE 9. INDEMNIFICATION

1. To the fullest extent permitted by law, the Vendor shall defend, indemnify, save and hold harmless the Town and its Mayor and Council, officials, officers, employees and agents individually and collectively (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions, suits, payments and judgments, demands and expenses (including, but not limited to, attorneys' fees, court costs, defense costs, consequential damages and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the Goods, and/or Vendor's performance (or lack thereof) pursuant to this Contract. The Vendor's duty to defend, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, Claims, damage, loss or expense relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this contract, including any employee of Vendor, anyone directly or indirectly employed by them or anyone for whose acts Vendor may be liable, regardless of whether it is caused in part by a party indemnified hereunder. It is the specific intention of the Parties that the Indemnitees shall be indemnified by Vendor from and against all Claims other than those arising from the Indemnitees' sole negligence. The Vendor shall be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. In the event that any action or proceeding shall at any time be brought against any of the Indemnitees by reason of any Claim referred to in this Article, the Vendor, at Vendor's sole cost and upon at least 10 day's written notice from Town, shall defend the same with counsel acceptable to Town, in Town's sole discretion.

3. The Vendor's obligations under this Article shall survive the expiration or earlier termination of this Contract.

4. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

ARTICLE 10. INSURANCE

Vendor shall secure and maintain during the life of this Contract, the insurance coverages set forth on **Exhibit "A"**.

ARTICLE 11. ADDITIONAL DISCLOSURES BY VENDOR

1. The Vendor shall reveal fully and in writing any financial or compensatory agreements which the Vendor has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Vendor hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor, to solicit or secure this contract, and that the Vendor has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Vendor any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Vendor shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

ARTICLE 12. CONTRACT ADMINISTRATOR

The Town's Contract Administrator for this Contract shall be the Town's Public Works Director or his/her designee(s).

ARTICLE 13. NOTICE

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager (or the Designated Contract Administrator)
22350 South Ellsworth Road
Queen Creek, Az 85242
Facsimile: (480) 358-3189

With a copy to: MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012
Att'n: Fredda J. Bisman, Esq.
Facsimile: (602) 285-5100

Vendor: CrafcO, Inc.
420 North Roosevelt Avenue
Chandler, Arizona 85226
Facsimile: (602) 276-0406

With a copy to: _____

Facsimile: () _____

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission. E-mail is not an acceptable means for meeting the requirements of this section unless otherwise agreed in writing.

ARTICLE 14. GENERAL PROVISIONS

A. RECORDS AND AUDIT RIGHTS. Vendor's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the Goods, and any invoices, change orders, payments or claims submitted by the Vendor or any of his payees related to or arising out of this Contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Vendor's records and personnel throughout the term of this Contract and for a period of three years after last or final payment.

B. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

C. ATTORNEYS' FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or an account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses (including expert witness fees), determined by the arbitrator or court sitting without a jury, which fees shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

D. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the Goods specified herein.

E. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws

and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

F. **INDEPENDENT CONTRACTOR.** The services Vendor provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Vendor shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide her/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Goods.

G. **TAXES.** Vendor shall be solely responsible for any and all tax obligations which may result out of the Vendor's performance of this contract. The Town shall have no obligation to pay any amounts for taxes, of any type, incurred by the Vendor. The Town will report the value paid for these Goods each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Vendor acknowledges that Vendor may be subject to I.R.S. provisions for payment of estimated income tax. Vendor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements. Sales tax for Goods received by the Town in relation to this Contract shall be indicated as a separate item on any notice of amount due.

H. **AMENDMENTS.** Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

I. **COMPLIANCE WITH LAW.** The Vendor specifically agrees and hereby warrants to the Town that in the performance of this contract, Vendor and anyone acting on Vendor's behalf, including but not limited to Vendor's subvendors, will comply with all state, Federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

J. **SEVERABILITY.** In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

K. **WAIVER.** None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agents or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

L. **COUNTERPARTS.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

M. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Vendor warrants to the Town that the Vendor and all its subvendors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Vendor acknowledges that a breach of this warranty by the Vendor or any of its subvendors is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Vendor or any subvendor who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Vendor and any of its subvendors to ensure compliance with this warranty.

The Town will not consider Vendor or any of its subvendors in material breach of the foregoing warranty if Vendor and its subvendors establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Vendor enters into with any and all of its subvendors who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

N. PROHIBITION OF DOING BUSINESS WITH SUDAN AND IRAN. Pursuant to A.R.S. §§35-391.06 and 35-393.06, Vendor hereby certifies to the Town that Vendor does not have "scrutinized" business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. Vendor acknowledges that, in the event either of the certifications to the Town by Vendor contained in this paragraph is determined by the Town to be false, the Town may terminate this Contract and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393.06.

O. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a Vendor to any other party to the contract with respect the subject matter of the contract.

P. LICENSES. Vendor shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Vendor and the Goods to be provided under this Contract.

Q. PERMITS AND RESPONSIBILITIES. Vendor shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying

with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work and provision of Goods.

R. **LIENS.** Vendor shall cause all Goods, materials, service, or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Vendor shall deliver appropriate written releases, in statutory form, of all liens to the Town.

S. **Construction.** The terms and provisions of this Contract represent the results of negotiations between the Parties and therefore the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with interpretation and construction of this Contract and that ambiguities or conflicting terms or provisions shall be interpreted or construed against the Party whose attorney prepared or drafted the executed Contract or any earlier draft of the same or any of its exhibits.

ARTICLE 15. FUNDS APPROPRIATION

If the term of this Contract or provision of any Goods hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination at least thirty (30) days prior to the end of the current fiscal period and will pay to the Vendor approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this agreement on the date first written above.

TOWN OF QUEEN CREEK:

Approval of Town Council:

Approval of Contract Administrator:

Gail Barney, Mayor

John Kross, Town Manager

ATTEST:

Jennifer Robinson, Town Clerk

REVIEWED AS TO FORM:

Mariscal, Weeks, McIntyre & Friedlander, P.A.
Town Attorneys

VENDOR:



Bryan Darling
Crafco, Inc.'s Regional Manager

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ATTEST:

Jennifer Robinson, Town Clerk

REVIEWED AS TO FORM:

Mariscal, Weeks, McIntyre & Friedlander, P.A.
Town Attorneys

VENDOR:



Bryan Darling
Crafco, Inc.'s Regional Manager

EXHIBIT A

INSURANCE

1. **Insurance Certificate:** The Town requires a complete and valid certificate of insurance prior to the award of any contract. Vendor shall submit a copy of the insurance certificate for coverage with minimum amounts stated below. The coverage shall be maintained in full force and effect during the term of the Contract and shall not serve to limit any liabilities or any other Vendor obligations. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer.

2. **Deductible:** The amount of any deductible shall be stated on the face of the certificate. The Contract Administrator may require Vendor to furnish a financial statement establishing the ability of Vendor to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish Vendor's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to Vendor.

3. **General Liability:** Vendor shall secure and maintain, at his or her own expense, until completion of the contract, general liability as shall protect Vendor and the Town from claims for bodily injury, personal injury, and property damage which may arise because of the Goods provided under this contract. Vendor shall provide general liability and excess general liability coverage in the following amounts, at a minimum in an amount not less than \$2,000,000. For example, coverage may include \$1,000,000 primary and \$1,000,000 excess, \$2,000,000 primary, or other equivalent combinations. The Town shall be named as an Additional Insured.

4. **Automobile Liability:** Vendor shall secure, and maintain at his or her own expense, until the completion of the Contract, coverage for any auto, including non-owned and hired autos, with a combined single limit of \$1,000,000 per occurrence. The Town shall be named as an Additional Insured.

5. **Worker's Compensation Insurance:** Before beginning work, Vendor shall furnish to the Town satisfactory proof that he or she has, for the period covered under the Contract, full Worker's Compensation coverage for all persons whom Vendor may employ directly, or indirectly, and shall hold the Town free and harmless for all personal injuries of all persons whom Vendor may employ directly or indirectly.

6. **Additional Insured:** Vendor shall name the Town of Queen Creek as an "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance.

7. **Rating of Insurance Company(ies):** Any and all insurance company(ies) supplying coverage to Vendor must have no less than an "A" rating in accordance with the A.M. Best rating guide.

8. **Waiver:** The Town Manager, in consultation with the Risk Manager and/or Town Attorney, reserves the right to waive, reduce, or increase insurance requirements should it be in the best interest of the Town.

9. **Additional Insurance Requirements:** The Vendor is primarily responsible for the risk management under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Vendor shall require any and all subvendors to maintain insurance as required herein naming Town and Vendor as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Vendor's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Vendor shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Vendor waives all rights of subrogation or similar rights against Town, its representatives, agents, and employees.

EXHIBIT B
ORIGINAL CONTRACT

Street Maintenance Equipment

MAIL ROOM Page 1 of 4

A CONTRACT BETWEEN
HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas
AND
CRAFCO, INC.
Chandler, Arizona

2012 AUG 24 PM 2: 10

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **Crafco, Inc.** hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 420 North Roosevelt Avenue, Chandler, Arizona 85226.

ARTICLE 1: SCOPE OF SERVICES

The parties have entered into a **Street Maintenance Equipment** Contract to become effective as of October 1, 2012, and to continue through September 30, 2014 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Street Maintenance Equipment** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Street Maintenance Equipment** through the **H-GAC** Contract to **END USERS**.

ARTICLE 2: THE COMPLETE AGREEMENT

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No: **SM10-12**, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No: **SM10-12**, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3: LEGAL AUTHORITY

CONTRACTOR and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 4: APPLICABLE LAWS

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 5: INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

ARTICLE 6: END USER AGREEMENTS

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer to, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's** **H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to H-GAC. H-GAC reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. H-GAC shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9: REPORTING REQUIREMENTS

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE

If CONTRACTOR, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, CONTRACTOR shall notify H-GAC within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to H-GAC.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.

EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.

ARTICLE 11: SEVERABILITY

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 12: DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, CONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. CONTRACTOR may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with H-GAC'S final decision.

ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

ARTICLE 15: TERMINATION FOR CAUSE

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

ARTICLE 16: TERMINATION FOR CONVENIENCE

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 18: GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

ARTICLE 20:

LIQUIDATED DAMAGES

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

ARTICLE 21:

PERFORMANCE BONDS FOR INDIVIDUAL ORDERS

Except as described below for fire apparatus, CONTRACTOR agrees to provide a Performance Bond at the request of END USER within ten (10) days of receipt of END USER's purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the END USER. Failure of CONTRACTOR to provide such performance bond within ten (10) days of receipt of END USER's order may constitute a total breach of contract and shall be cause for cancellation of the order at END USER's sole discretion. END USER may choose to delete the requirement for a Performance Bond at END USER's sole discretion. If the bond requirement is waived, END USER shall be entitled to a price reduction commensurate with the cost that would have been incurred by CONTRACTOR for the bond.

ARTICLE 22:

CHANGE OF CONTRACTOR STATUS

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

ARTICLE 23:

LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD (IF APPLICABLE)

CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

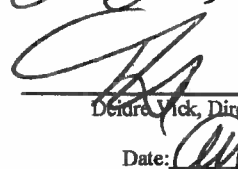
IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston
Area Council, Houston, Texas:



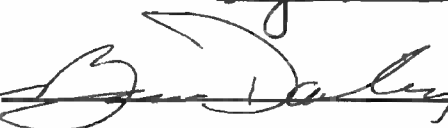
Jack Steele, Executive Director

Attest for Houston-Galveston
Area Council, Houston, Texas:



Debra Vick, Director of Public Services
Date: August 31, 2012

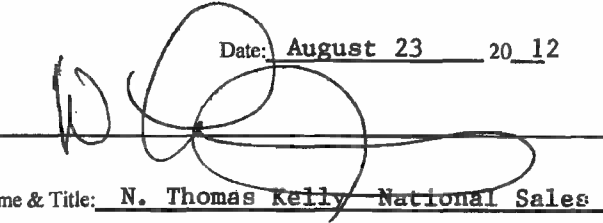
Signed for Crafc, Inc.
Chandler, Arizona:



Printed Name & Title: Bryan Darling Western Regional Sales Manager

Date: August 23, 2012

Attest for Crafc, Inc.
Chandler, Arizona:



Printed Name & Title: N. Thomas Kelly National Sales Manager

Date: August 23, 2012

Attachment A
Crafco, Inc.
Street Maintenance Equipment
Contract No. SM10-12

H-GAC Product Code	Item Description	Offered Price Discount
13A	Crafco Pothole Patchers Pricing Catalog/Price Sheet effective 06-01-2012	5%
13B	Crafco Melter-Applicators/Crack Sealers Pricing Catalog/Price Sheet effective 06-01-2012	7-10%
13C	Crafco Emulsion Storage Tanks Pricing Catalog/Price Sheet effective 06-01-2012	2%
13D	Crafco Pavement Cutters Pricing Catalog/Price Sheet effective 06-01-2012	2%
13E	Crafco Crack-Vac Asphalt Crack Cleaners Pricing Catalog/Price Sheet effective 06-01-2012	2%
13F	Crafco BAX Skid-Mounted Marker Placers Pricing Catalog/Price Sheet effective 06-01-2012	2%
13G	Crafco SuperSeal Coater Pricing Catalog/Price Sheet effective 06-01-2012	2%



CONTRACT PRICING WORKSHEET
For Standard Equipment Purchases

Contract No.:

SM10-12

Date Prepared:

10/15/2012

This Form must be prepared by Contractor and given to End User. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.

Buying Agency:	Town of Queen Creek	Contractor:	Crafco Inc.
Contact Person:	Jan Martin	Prepared By:	Ed Myers
Phone:	480-358-3821	Phone:	602-276-0406
Fax:	480-358-3133	Fax:	480-940-0313
Email:	jan.martin@queencreek.org	Email:	edward.myers@crafco.com

Product Code:	13B	Description:	Supershot 125 with Compressor
---------------	------------	--------------	--------------------------------------

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 46305

B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
PN 20014 3" Pintle Hitch	114.24		
PN 24007 6' Trunk Connection (5 Way Flat)	9.6		
PN 20140 28" Hitch Extension	544		
PN 24086 Locked Battery Box	133.6		
PN 24095K Strobe Light Kit (LED)	273.6		
PN 26058 10# Fire Extinguisher with Cover	171.2		
PN 26059 Fire Extinguisher Bracket	76		
PN 24190K Overnight Heater	288		
PN 26119 3/8 Hooks with Safety Latch (2 of them)	104		
PN 43520 Spare Tire Kit	218.4		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	1932.64

C. Unpublished Options - Itemize below - Attach additional sheet if necessary
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Subtotal From Additional Sheet(s):	
		Subtotal C:	0

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 0%

D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	48237.64	=	Subtotal D:	48237.64
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E. Other Charges, Trade-Ins, Allowances, Discounts, Etc.

Description	Cost	Description	Cost
Sales Tax (7.3%)	3521.35		
		Subtotal E:	3521.35

Delivery Date: **F. Total Purchase Price (D+E):** 51758.99

EXHIBIT C

GOODS



420 N. Roosevelt Avenue
Chandler, AZ 85226
(602) 276-0406 (800) 528-8242
FAX: (480) 940-0313

QUOTE #AAAQ4569

Date Quoted 9/27/2012
EXPIRATION DATE: 12/31/2012

Quote To:
Queen Creek, Town of
Jan Martin
22350 S Ellsworth Rd
Queen Creek, AZ 85242
United States of America

Ship To:
Queen Creek, Town of
22350 S Ellsworth Rd
Queen Creek, AZ 85242
United States of America

Phone: (480) 358-3821
Fax: (480) 358-3133
Email: jan.martin@queencreek.org

Jan Martin
(480) 358-3821 jan.martin@queencreek.org

Project Title: Crafc0 SS125 Melter OFF HGAC

Terms: Net 30
F.O.B.: ORIGIN/PREPAID/CHARGED BACK
Ship Via: Best Way

Bid Date:
Bid Number:
Project Start Date:
Ship Before: 12/31/2012

Quoted By: Edward Myers
Region Code: WR7

Quote Effective Dates: 9/27/2012 TO 12/31/2012

Estimated Time to Ship After Receipt of Order: 14 to 30 days from order

Customer: Queen Creek, Town of **Quote Number** AAAQ45699
Project Title: Crafc0 SS125 Melter OFF HGAC **Date** 09-27-12

Part #	Description	Unit	Qty.	Retail	Quote Price	Ext. Price
43800	SS125 DIESEL COMPRESSOR REV.M	EA	1	\$51,450.0000	\$46,305.0000	\$46,305.0000
20014	3" PINTLE HITCH REV.D	EA	1	\$142.8000	\$114.2400	\$114.2400
24007	6' TRUNK CONN. (5-WAY FLAT) REV.C	EA	1	\$12.0000	\$9.6000	\$9.6000
20140	28" HITCH EXTENSION ASS'Y. R.G	EA	1	\$680.0000	\$544.0000	\$544.0000
24086	LOCKED BATT. BOX (CALTRANS) R.F	EA	1	\$167.0000	\$133.6000	\$133.6000
24095K	STROBE LIGHT KIT (LED)	EA	1	\$342.0000	\$273.6000	\$273.6000
26058	10# FIRE EXT. W/ COVER REV.B	EA	1	\$214.0000	\$171.2000	\$171.2000
26059	FIRE EXT. BRKT REV.A	EA	1	\$95.0000	\$76.0000	\$76.0000
24190K	OVERNIGHT HEATER W/ FITTING	EA	1	\$360.0000	\$288.0000	\$288.0000
26119	3/8 HOOK W/ SAFETY LATCH REV.A	EA	1	\$65.0000	\$52.0000	\$104.0000
43520	SPARE TIRE KIT-SS DUAL AXLE R.A	EA	1	\$273.0000	\$218.4000	\$218.4000

TOTAL \$48,237.64

COMMENTS:
Price includes delivery and Safety Training
Price does not include any applicable sales taxes
Price from HGAC Contract SM10-1



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/18/2012

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

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

PRODUCER Marsh USA Inc. 701 Poydras Street, Suite 4125 neworleans.certrequest@marsh.com New Orleans, LA 70139	CONTACT NAME: _____	
	PHONE (A/C, No. Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____	
INSURED Ergon -All-All-12-13 Crafcio, Inc. P.O. Box 1639 Jackson, MS 39215-1639	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Zurich American Insurance Co	16535
	INSURER B : American Zurich Insurance Co.	40142
	INSURER C : American Guarantee & Liability Ins Co	26247
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** HOU-002191740-01 **REVISION NUMBER:** 4

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$250,000 SIR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X		GL0930073911	08/01/2012	08/01/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000	
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X		BAP291743514	07/01/2012	07/01/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
C	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$			UMB967202804	08/01/2012	08/01/2013	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N	N/A	WC291716514	07/01/2012	07/01/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Waiver of Subrogation and Additional Insured provided on Commercial General Liability and Auto Liability where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

Town of Queen Creek 22350 S Ellsworth Rd Queen Creek, AZ 85242	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. David B. Gorney <i>David B. Gorney</i>

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Requesting Department:
Town Manager's Office,
Workforce & Technology
Department



TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, TOWN MANAGER

FROM: BRUCE GARDNER, WORKFORCE & TECHNOLOGY DIRECTOR
FREDDA BISMAN, TOWN ATTORNEY

A handwritten signature in black ink, appearing to be "J. Kross", is written over the name "BRUCE GARDNER" in the "FROM:" line.

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE CABLE
LICENSE AGREEMENT BETWEEN THE TOWN OF QUEEN
CREEK AND QWEST BROADBAND SERVICES, INC, d.b.a.
CENTURYLINK**

DATE: November 7, 2012

Staff Recommendation:

Consideration and possible approval of the cable services license agreement with Qwest Broadband Services, Inc. (doing business as (d.b.a.) CenturyLink) (Town Code, Chapter 17, Cable Communications)

Proposed Motion:

Move to approve the cable services license agreement with Qwest Broadband Services, Inc (d.b.a. CenturyLink) as per Town Code, Chapter 17, Cable Communications.

Discussion:

The Town has authority to grant, renew, deny and terminate nonexclusive licenses for the construction, operation and maintenance of cable systems and to regulate television service within the Town's boundaries by federal and state statutes. Currently, the Town has one active cable license agreement with Cox Communications. Originally the license agreement was with Cable America; however, the rights under the agreement transferred to Cox Communications after it purchased the company in 2006. The license agreement with Cox Communications is scheduled to expire in March 2016. The cable license agreement with CenturyLink will be the second cable agreement approved by the Town since its inception.

Procedures

Town Code, Chapter 17, Cable Communications, governs the process to receive a cable license agreement with the Town. As per Article, 17-5, the company shall submit an application request to the Town and all applications for cable communications must be approved by the Town Council prior to entering into a license agreement. CenturyLink conducted a presentation during the September 19, 2012 Work Study on application intent and products, and received application approval by the Town Council. Since then, the Town Attorney and Workforce & Technology Director have entered into negotiations to create a cable license agreement. The attached license agreement is patterned after similar CenturyLink agreements recently created with the City of Tempe and draft agreement with City of Mesa.

Product Being Offered

CenturyLink is currently known for telephone and internet service and is looking to expand into the cable communications market. CenturyLink has developed a new product, titled Prism TV, which uses fiber-optic technology through broadband IP connections and network. Future subscribers will connect through their IP connection into a set-top box DVR receiver to access up to 250 local and cable channels. CenturyLink currently offers this product in other States and is currently marketing the product in the City of Chandler. The City of Tempe recently approved its agreement, and the City of Mesa is currently negotiating a cable license agreement as well. Only residents that currently have broadband speeds of 20mb or greater will be able to meet the technology requirements for the product, which is about 25% of the company's current customers in Queen Creek.

Summary of the Cable License Agreement

Attached (attachment A) is the final draft of the negotiated cable license agreement. Some of the highlights of the agreement include:

- As with all Cable License Agreements, this license will be subject to and governed by all requirements of the Cable Communications Policy Act of 1984. Additional requirements will be governed by the Town Code (Chapter 17) for Cable Communications.
- Any work in the public right-of-way will require a Town issued permit for any construction and installation of equipment, with no off-set of fees. (Note that although we issue permits to Cox Communications, there is no associated fee).
- The agreement terms is for ten years. Within thirty-six months of expiration (about November of 2019), the Town shall enter into new negotiations to determine whether to extend the agreement another five years.

- License fees will be paid quarterly, which comprise of five percent (5%) of CenturyLink's gross revenues *of the cable service* during the term of the license. Note that any bundling of services will be taken into account when determining these license fees.
- CenturyLink will be required to provide the same level of cable service to Town residents as those within the Phoenix metropolitan area, including the mix and level of quality of the programming.
- Customer service guidelines will be governed by FCC Customer Service Standards and within Town Code Chapter 17. Any additional service standards may be required by the Town as long as CenturyLink is given 120 days notice.
- Upon receipt of a request for assistance referred by the Town on behalf of a resident, property owner, or tenant, CenturyLink will make an attempt to resolve the concern within 24-hours of receipt of referral. A 24-hour/per day, seven (7) days-a-week toll-free telephone number will be available to Town residents for complaints, requests for repairs, service calls, and billing inquiries.
- Within 120 days of the Town's written request, CenturyLink shall provide one channel for the Queen Creek Fire Department and one channel for the future Queen Creek Police Department, at no cost to the Town.
- Within 60 days of the Town's written request, CenturyLink shall provide at least one channel as the local government access channel at no cost.
- Basic Digital Cable Service shall be provided to the Town buildings at no cost.
- If and when technologically feasible, the Town shall be provided a means in which to interrupt programming to present a Queen Creek Emergency Alert audio announcement or text crawl message by public and law enforcement officials.
- After 120 days of service within the Town, CenturyLink shall provide one educational access channel for the exclusive use of all schools (public and private) within Town limits. If a channel is not able to be activated, then the Phoenix Education Access channel shall be provided.
- Pursuant to Town Code, CenturyLink must extend and make cable television service available to every un-served dwelling unit within any area of the Town reaching the minimum density of at least thirty-five dwelling units per mile from the nearest activated Remote Terminal site.
- Each first quarter of the calendar year, CenturyLink shall meet with the Town for a detailed report of the construction schedule for the year, including mapping.

Next Steps

1. Within 30 days of the official launch, CenturyLink will provide to the Town the channel lineup, pricing structure, and the intended launch dates. Staff will provide that information in a future weekly update, once received.

2. Before the end of the year and the official launch, CenturyLink will work with several test customers in the area.
3. New greenfield projects and developments will have fiber-to-the-home technology installed.
4. Initial marketing to the residents will include common door hangers and direct mail, which will include the offers, prices, and channel lineups. After the launch, outbound calling to potential customers may occur.

Fiscal Impact:

Once the cable license is approved, CenturyLink will be required to pay to the Town 5% of the gross annual revenue during the term of the approved license within the licensed area (Town limits). While the amount remains unclear since it is a new product deployment, the Town's revenue from Cox is approximately \$100,000+ annually. However, keep in mind that CenturyLink will now be a competitor directly with Cox and some revenue received from CenturyLink will be from the same market share.

Alternatives:

Council could delay approval of cable license agreement, to request more information, prior to making a decision.

Attachment(s)

**CABLE LICENSE AGREEMENT BETWEEN THE TOWN OF QUEEN CREEK
AND QWEST BROADBAND SERVICES, INC., d/b/a/ CENTURYLINK**

This Cable Services License Agreement (the "License") is effective as of the _____, by and between the Town of Queen Creek, an Arizona municipal corporation ("Town") and Qwest Broadband Services Inc., d/b/a/ CenturyLink ("Licensee"), a corporation organized and existing under the laws of the State of Colorado.

WITNESSETH

WHEREAS, the Town of Queen Creek is authorized to grant, renew, deny, and terminate Licenses for the construction, operation and maintenance of Cable Systems and otherwise regulate cable television service within the Town's boundaries by virtue of federal and state statutes, by the Town's police powers, by its authority over its public rights of way, its ordinances and regulations, and by other Town powers and authority; and

WHEREAS, in light of enactment of the Telecommunications Act of 1996 ("1996 Act") and Chapter 17 of the Code of the Town of Queen Creek, Arizona, the Town hereby finds that it would serve the public interest to grant the License under the terms and conditions hereinafter set forth, and Licensee agrees to obtain a License under these conditions;

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

CABLE SERVICES LICENSE AGREEMENT

1. Definitions.

The definitions set forth in Chapter 17 of the Queen Creek Town Code are applicable to this License. In addition:

1.1 **Affiliate** means a company controlled by, under common control with or controlling Licensee.

1.2 **Cable Ordinance** shall mean those provisions of the Queen Creek Town Code that apply to cable systems and cable service being generally Chapter 17 of the Queen Creek Town Code in effect at the Effective Date of this License Agreement.

1.3 **Chapter 17** means Chapter 17 of the Town Code, as the same may, from time to time, be amended.

1.4 **Customer** means subscriber.

1.5 **Facilities** means the plant, equipment, boxes, cabinets, wires, pipe, conduit, cable, fiber optic cable, pedestals, antenna, and other appurtenances.

1.6 **FCC Customer Service Standards** shall mean the customer service rules of the FCC, 47 CFR §§ 76.309, 76.1602, 76.1603 and 76.1619 and incorporated herein.

1.7 **Gross Revenues.** Gross revenues shall have the meaning set forth in A.R.S. Section 9-505(6) and any amendments thereto, subject to the provisions of Town Code, Chapter 17.

1.8 **Hazardous Substances.** Hazardous substances shall mean any and all hazardous substances, pollutants or wastes that may be regulated under any federal, state or local law, statute or ordinance (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) (collectively, the "Environmental Laws"). The term, "Hazardous Substances" shall include, without limitation, polychlorinated biphenyls, asbestos and asbestos containing materials.

1.9 **Living Unit** shall mean a distinct address in the Qwest Corporation d/b/a CenturyLink network inventory where Qwest Corporation currently has, had in the past, or has planned to provide service to a customer. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

1.10 **Multiple Dwelling Unit** means any adjacent building(s) such as apartments under common ownership containing more than four (4) dwelling units used as living quarters.

1.11 **PEG Channels** shall mean the non-commercial, public, educational and government channels provided by Licensee on the Cable System under Sections 12, 13, 15 and 16.

1.12 **Public Safety Channels** shall have the meaning set forth in Section 12.1.

1.13 **Public right-of-way** means all roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the Town.

1.14 **Remote Terminal** means a Digital Subscriber Line Access Multiplexer (DSLAM) capable of offering Cable Services to Subscribers.

1.15 **Segment** shall mean any portion of the Cable System serving one (1) or more Subscribers.

1.16 **Service Interruption** means the loss of picture or sound on one or more cable channels or the significant deterioration of signal or sound.

1.17 **Subscriber Complaint** means any written or oral complaint by a Subscriber to the Town that the Subscriber did not receive the Cable Service that the Subscriber requested consistent with the requirements of this License.

1.8 **Video Programming** means programming that is provided by, or generally comparable to programming provided by, a broadcast television station.

2. Grant of Authority to Operate

2.1 The Town hereby grants to the Licensee the authority and permission to engage in the business of operating and providing a Cable System in the Town, and for that purpose to erect, install, solicit, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street such as poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary or appurtenant to the Cable System. Licensee may also so use, operate and provide similar Facilities on properties rented, licensed or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the Town, provided, however, that neither the Licensee nor the

third party shall be relieved of any regulation or obligation as to its use of such Facilities in the streets. The service area for the Cable System shall be the current incorporated boundaries of the Town and any future annexations by the Town.

2.2 Licensee promises and guarantees, as a condition of exercising the privileges granted by this License, that any Affiliate of the Licensee directly involved in the offering of Cable Service in the Town or directly involved in the management or operation of System in the Town, will also comply with the obligations of this License. However, the parties acknowledge that Qwest Corporation, an affiliate of Licensee and an indirect wholly-owned subsidiary of CenturyLink, Inc., will pull permits and be primarily responsible for the construction and installation of the Facilities in the Public right-of-way, which will be utilized by Licensee to provide Cable Services, and Qwest Corporation will own, operate and maintain all such Facilities not installed by Licensee. So long as Qwest Corporation does not provide Cable Service to Subscribers in the Town, Qwest Corporation will not be subject to the terms and conditions contained in this License pertaining to Cable Services.

Qwest Corporation's installation and maintenance of Facilities in the Public right-of-way are governed by applicable law.

The parties also acknowledge that if and when Qwest Corporation does provide Cable Services to Subscribers, Qwest Corporation will need to get a separate cable license from the Town. To the extent Licensee constructs and installs Facilities in the Public right-of-way, such installation will be subject to the terms and conditions contained herein, whether by Licensee, Qwest Corporation, or a contractor or subcontractor of either entity.

2.3 This grant of authority to operate a Cable System in the Town and the right to use and occupy the public ways for the purposes herein set forth shall not be exclusive. The Town reserves the right, at its discretion, to grant licenses under the terms of Chapter 17 to other cable operators.

2.4 Any privilege claimed under this License by the Licensee in any public Street or other public property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the Town or any other governmental entity, and shall be subordinate to any prior lawful occupancy or use thereof by any other person, and shall be subordinate to any prior easements therein; provided, however, that nothing in this License shall extinguish or otherwise interfere with property rights established independently of this License.

2.5 Licensee shall be subject to all requirements of Town's rules, regulations and specifications heretofore or hereafter enacted or established, including, but not limited to, Chapter 17 of the Town Code, and shall comply with all applicable state and federal laws and regulations heretofore or hereafter enacted or established. Town reserves the right to amend its ordinances to require additional or greater standards of construction, operation, maintenance or otherwise pursuant to the Town's lawful police powers or as provided in this License, provided, however, that such amendments enacted or modified after the effective date of this License as applied to Licensee shall be reasonable and not materially modify the terms of this License.

2.6 If any state or federal law or regulation shall require Licensee to perform any service, or shall permit the Licensee to perform any service, or shall prohibit the Licensee from performing any service in conflict with the terms of this License or any law or regulation of the Town, then as soon as possible following knowledge of such conflict, the Licensee or the Town shall notify the other party of the conflict believed to exist between such state or federal law or regulation and the laws or regulations of the Town.

2.7 The grant of this License shall not relieve Licensee of any obligation involved in obtaining pole space from any department of the Town, utility company or from others maintaining poles in the streets.

2.8 Facilities that Licensee uses to provide Cable Services will meet all undergrounding requirements imposed by the Town, unless it is technologically impossible for specific above ground equipment to function properly if placed underground.

3. Controlling Authorities

3.1 This License is subject to and shall be governed by all terms, conditions, and provisions of Chapter 17, a copy of which is attached hereto as Exhibit A, subject to Section 2.5 of this License, and subject to the provisions of A.R.S. §9-501, et seq..

3.2 This License is subject to and shall be governed by all requirements of the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq, and any amendments thereto, including the 1996 Act, and other federal and state laws and regulations and local laws, ordinances and regulations governing cable communications. In the event of a conflict between the terms and conditions of this License and the terms and conditions on which the Town can grant a license, to the extent possible, the terms and conditions of this License shall be construed to be in conformance with all the federal, state and local laws and regulations.

4. Reservation of Rights

All rights reserved to the Town under Queen Creek Town Code Chapter 17 are part of this License and included in this agreement. See Exhibit A.

(a) Should the United States or the State of Arizona enact laws or regulations affecting this License, then Town and Licensee shall negotiate in good faith to amend this License to the extent such laws or regulations require this License to conform to the new laws or regulations prior to its expiration.

(b) Should a court of competent jurisdiction enter a final non-appealable order or judgment affecting this License, then the Town and Licensee shall amend the License to conform to the order or judgment.

5. Acquisition by Town

This License incorporates the provisions of Chapter 17 of the Queen Creek Town Code. See Exhibit A.

6. Term. This grant of authority shall run for a term of ten (10) years from November 8, 2012 (the "Effective Date"), unless terminated sooner as provided in this License or extended as provided in Section 6.1.

6.1 License Term Renewal.

6.1.1 The term of the License under Section 6 hereof, all rights, privileges, obligations and restrictions pertaining thereto, can be extended as follows:

6.1.2 During the six (6) month period which begins the thirty-sixth months before the license expiration (November 8, 2019 to June 9, 2020) the requirements of Chapter 17, Section 11 shall govern and if Licensee does not elect the proceeding described therein, the Town may renew the License for an additional five (5) years November 8, 2027 if, at the end of the seventh year after the Effective Date (by

November 8, 2019), Licensee offers Cable Services to fifty percent (50%) or more of the Living Units in the Town of Queen Creek for the previous twelve (12) months and duly notifies the Town with reasonable documentation.

6.1.3 The number of Living Units for a particular year shall be determined based on Qwest Corporation's network inventory database. As of June 30, 2012, there were 8,480 Living Units in the Town.

6.1.4 The extensions of the term of this License under Section 6.1.2 shall not become effective until the Town Council has accepted by resolution, the appropriate documentation evidencing the completion of the requirements of Section 6.1.2, as applicable.

7. Transfers and Assignments

Any transfer and/or assignment of this License will be subject to the provisions of Section 50 of this License and Article 17-12 of the Queen Creek Town Code See Exhibit A.

8. License Fees and Payments

8.1 Licensee shall pay to the Town a License Fee in an amount equal to five percent (5%) of Licensee's Gross Revenues during the term of this License.

8.1.1 The provisions of A.R.S. 9-506(c)(3) shall be in effect to calculate the license fees.

8.1.2 Licensee shall pay License Fees on a quarterly basis as provided below:

<u>Due Date</u>	<u>Quarter</u>
April 30	First (January 1 – March 31)
July 30	Second (April 1 – June 30)
October 30	Third (July 1 – September 30)
January 30	Fourth (October 1 – December 31)

8.2 If Licensee offers Subscribers a price discount if they obtain a bundle of Cable Service and one or more non-Cable Service goods or services, then beginning on the Effective date of this License for the purpose of computing Gross Revenues, the discount shall be allocated equally to each service or good included in the bundle. It is the intent of this subsection that a Licensee not bundle Cable Services with non-Cable Services in such a manner that the amount of Gross Revenues attributed to the Cable Services reduces the License fees payable under the License.

8.3 Nothing herein shall be construed to require a Licensee to offer any service at a price, where the price for that service is otherwise established by law or regulation.

8.4 Licensee shall bear reasonable costs that are associated with damage caused to public streets, road and alleys by construction, maintenance and operation of its Facilities in the public streets, roads and alleys. Such costs are not to be offset against the License Fee.

8.5 Licensee shall pay all fines, fees, charges or damages for breach of the terms and conditions of the License.

8.6 If Licensee requests an expedited review of any permits required for construction and inspection and Town agrees to such expedited review, all costs associated with such expedition shall not be offset against

the License Fee. It is within the Town's complete discretion as to whether or not to provide such expedited review.

8.7 Town shall have the inspection and audit rights described in Queen Creek Town Code Article 17-9. See Exhibit A to verify the accuracy of License Fees paid to the Town. All records reasonably necessary for such audit shall be made available by Licensee at a location in Queen Creek. All sums not paid when due shall bear interest at a rate which is one percent (1%) over the prime rate being charged by the Town's banking services.

8.8 License fees required by this License shall be in addition to any and all taxes of a general nature and not applicable solely to cable service operations within the Town or other fees or charges which Licensee shall be required to pay to the Town or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of the Licensee.

9. System Design and Technical Capacity

9.1 System Design. Licensee's video network is fully integrated with its telephone network and uses an Ethernet-based, switched digital video service (not a QAM-based broadcast system).

9.2 The Cable System as installed shall provide the following services and shall possess the following technical capabilities:

(a) Subscriber Network. The Cable System shall have a fully activated capability to provide Broadcast Quality services of equal quality to those provided over a traditional 750 MHz or higher hybrid fiber coaxial Cable System.

(b) High Definition Capability. Licensee shall make available high definition (HD) capability to all subscribers in Queen Creek in accordance with applicable industry standards.

10. Services Provided

10.1 The Licensee shall provide "Basic Service" as defined in Section 611 of the Cable Act.

10.2 The Licensee shall submit to the Town a schedule of the video and audio programming that is proposed to be offered on the Subscriber network system and the channel assignment for each.

10.3 The Licensee shall make available for commercial use/leased access such channels as are required by federal law or regulation.

10.4 Licensee shall comply with Queen Creek Town Code Article 17-10.D with respect to continuity of service. See Exhibit A.

10.5 Licensee shall use its best efforts to diligently pursue offering Cable Services to as many Living Units as economically reasonable during the term of its license with the Town.

10.6 Licensee also agrees to meet quarterly with Town officials to update its progress with respect to Section 10.5 and its efforts in expanding its service areas within Queen Creek.

11. Service Standards

11.1 Licensee agrees throughout the term of this Agreement to extend Cable Services and transact a Cable Television business within the Town of Queen Creek to residents, as provided herein. The Licensee shall offer Cable Services that are equal in quality to those offered by Licensee in contiguous communities to the Town in the Phoenix metropolitan area. Should there be a failure to maintain the mix, level or quality of services within the broad categories of video programming or other services as set forth in this License, the provisions of Article 17-10 of the Queen Creek Town Code will apply.

11.2 The Licensee shall comply with the more stringent of the customer service and consumer protection provisions of this Agreement; those from time to time adopted by Licensee; the FCC Customer Service Standards 76.309; 76.1602, 76.1603, 76.1619 (attached as Exhibit B); and those provisions of Chapter 17 of the Queen Creek Town Code. See Exhibit A.

11.2.1 As to Licensee, the parties agree that the signing of this Agreement satisfies the requirement in the FCC Customer Service Rules that the franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the FCC standards and that it is the Town's intent to do so.

11.2.2 The Town reserves the right to adopt other customer service standards in the future. To the extent that the Town adopts any additional customer service standard(s), the Town shall provide Licensee with one hundred and twenty (120) days notice prior to the enforcement of such customer service standard(s).

11.2.3 Upon receipt of a request for assistance from a resident, property owner, or tenant which has been referred to Licensee from the Town, Licensee shall make every reasonable attempt to contact the resident, property owner, or tenant in an attempt to resolve the issue causing the resident, property owner, or tenant's concern, within 24 hours of receipt of the referral. Licensee shall respond to the Town, via e-mail, within 48 hours indicating when and what action(s) took place in response to the request for assistance. Licensee shall provide, in writing, upon request from the Town, a detailed description of actions taken in response to a residents request for assistance.

11.3 Licensee will not engage in the practice of "negative option" marketing and will not charge a Subscriber for any optional, a la carte or premium service or equipment that the Subscriber has not affirmatively requested.

11.4 Licensee shall provide all Subscribers with the option of prohibiting the viewing of a particular Cable Service during periods selected by the Subscriber.

11.5 Subscribers shall be given the option of not having pay per view or per program service available at all or only provided upon the Subscriber providing a security number selected by an adult representative of the Subscriber.

11.6 Upon request by a Subscriber and within a reasonable period of time, for a fee, Licensee shall use the appropriate technology and/or equipment to block such Subscriber from receiving both the audio and video portions (even though this may create problems on adjacent channels) of a channel on which programming is provided on a per program or pay per view basis.

11.7 Licensee shall provide a separate phone number or e-mail address of a management level person at Licensee for Town to contact on customer service related matters. Any such calls by Town to such person shall be returned within one (1) business day. On any complaints submitted by Town to such person,

Licensee shall within three (3) business days provide Town in writing its plan for resolution of such complaint.

11.8 For Subscribers desiring only seasonal service, Licensee shall either offer seasonal service at a reduction from its standard rates or shall offer a reduced prescheduled seasonal installation and disconnection charge.

12. Town Channels

12.1 Secured Public Safety Channels. Within one hundred twenty (120) days after the Town's written request and after Licensee begins providing digital Cable Services in the Town, the Licensee shall reserve one (1) channel for the Queen Creek Fire Department and reserve one (1) channel for any future Queen Creek Police Department, at no cost to the Town. These channels shall originate from any future studio built by the Town within the Municipal Complex or from such other location or locations as the Town designates. At no cost to the Town, the Licensee shall secure the audio and video portions of the signals delivered over these channels so that the signals may only be received by specially equipped converters installed by Licensee at locations designated by the Town.

12.2 Government Access Channel. Within one hundred sixty (60) days after the Town's written request and after the Licensee begins providing digital Cable Service in the Town, the Licensee shall reserve at least one (1) channel, but not more than two (2), on the Subscriber Network designated as the local government access channel(s) to be used by local government officials and agencies, at no cost to the Town, for future use at the Town's discretion. These channels shall originate from any future studio built by the Town within the Municipal Complex or from such other location or locations as the Town designates. Licensee shall provide, at its expense and at no offset to the License Fee, a return feed back to the programming feed. Licensee shall design, build, and maintain at its expense all PEG upstream feeds, connections, and distribution facilities between its video channel aggregation point and each Town Channel access interconnection site in order to permit the signals to be correctly routed from the Town Channel access interconnection sites to the appropriate Town Access Channel for distribution to Subscribers in order that such feeds are studio-quality links and function as reliably as Licensee's Cable system as a whole within the Town, and are no more likely to fail than is Licensee's Cable System as a whole within the Town. Licensee will periodically meet with Town officials to determine the feasibility of an alternate secondary feed for the Government Access Channel(s) from the Emergency Operations Center (EOC) when the EOC is activated. If and when such alternate secondary feed becomes technologically feasible, Licensee and the Town will determine the appropriate and economical measures needed to implement such feed. Licensee agrees that it shall provide the same number of channels as the Town may lawfully require from other licensed cable providers.

12.3 Maintenance of Facilities and Equipment. Licensee shall bear the costs and expenses necessary to provide, maintain and operate Facilities and equipment of the cable television system, including Facilities and equipment for signal carriage, processing, reformatting and interconnection to connect the cable television system, as it may be relocated from time to time, to transmit programming to and from existing locations of public, educational or governmental access Facilities and to allow monitoring of access programming at the Facilities and to transmit public, educational and governmental access channels to Subscribers with the same prevailing quality, functionality and identification as other channels. Licensee shall provide at no charge to the Town prompt and regular periodic maintenance and replacement of any cables, amplifiers, and/or other applicable distribution equipment owned by Licensee and used for the Town's channels. If Licensee makes changes to the Cable System that require improvements to the primary and/or secondary access Facilities or equipment in order to permit the Town Channel access equipment and facilities to continue to be used as they were intended under the terms of this License, then Licensee shall, without charge or cost to the Town, make such changes in either the equipment and

facilities referred to in this Section or in the Licensee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

12.4 Licensee shall work with the Town to place educational or governmental content on Licensee's network in the form of video "on demand" programming. Licensee reserves the right, after notice to the Town and subscribers, to consolidate all PEG channels to a single channel on the basic tier. All PEG channels could then be accessed either as an application on a menu or as choices on the assigned channel.

13. Services to the Town of Queen Creek

13.1 If and when the following buildings are within 4,000 feet of an activated Remote Terminal capable of providing Cable Service, and at the Town's request, Licensee shall provide at its own expense and not subject to offset against the License Fee, full Basic Digital Cable Service to the Town to the following buildings: Town Hall, Municipal Services Building, current and future Fire Stations, Library, Parks and Recreation Annex, Business Incubator, Public Works Yard, Police substation, and any future Town building. Upon request by the Town Manager, Licensee shall provide full Basic Digital Cable Service at no monthly charge to the Town to the offices and buildings of the Town and public schools, provided that the office or building is within 4,000 feet of an activated Remote Terminal capable of providing Cable Service. Upon written request from the Town Manager, at no charge to the Town, Licensee shall provide the full Basic Digital Service tier to future Town offices, buildings and public schools, provided that the office or building or school is within 4,000 feet of an activated Remote Terminal cable of providing Cable Service. Absent a showing by Licensee to Town Manager of unusual circumstances, which may include street crossings or plant extensions, any service to any Town offices or buildings shall be accomplished within ten (10) days of the written request for service or, if later in the case of a Town office or building not owned or leased by the Town, after owner's execution of any necessary easement or lease documents,

13.2 If and when technologically feasible, Licensee shall provide at no charge to the Town and as no offset to the License Fee, a means of interrupting all channels on the Cable System to present a Queen Creek Emergency Alert audio announcement and/or video text crawl message by public and law enforcement officials through cablecasts from a Town-designated location or from Licensee's head end in order to provide either public safety, health or welfare messages to Subscribers or when the Emergency Operations Center has been activated. The audio announcement shall automatically override all programming otherwise being provided on such channels and the video text crawl shall be superimposed on existing programming. Town may designate either the audio announcement or the video text crawl, at its option.

13.3 In accordance with the provisions of FCC Rules and Regulations Part 11, Subpart D, Section 11.51(h)(1), as they may from time to time be amended, Licensee shall install and maintain an Emergency Alert System and shall transmit all Emergency Act Notifications and Emergency Act Terminations relating to local and statewide situations as may be designated to be an emergency by the Local Primary, the State Primary and/or the State Emergency Operations Center, as those authorities are identified and defined within FCC Rules and Regulations, Part 11.

14. Point of Origin. The Town's channels shall each originate from locations designated by the Town within the corporate limits of the Town. Licensee shall establish the connection to the Cable System necessary for each of the Town's channels to originate from these locations at no cost to the Town. Licensee shall incur costs and expenses to provide, maintain and operate Facilities and equipment of the cable system, including Facilities and equipment for signal carriage, processing, reformatting and interconnection:

(a) To connect the cable system, as it may be relocated from time to time, to transmit programming to and from existing locations of public, educational or governmental access facilities and to allow monitoring of access programming at the locations; and

(b) To transmit public, educational and governmental access channels to subscribers with the same prevailing quality, functionality and identification as other channels.

15. Services to Educational Institutions

Within one hundred twenty (120) days after Licensee begins providing digital Cable Service in the Town, Licensee shall provide one educational access channel on the Cable System for the exclusive use of all schools (public and private nonprofit) within the Town. Licensee agrees that it shall provide the same number of channels under this Section 15 as the incumbent cable provider. If such a channel is not activated locally, Phoenix Education Access channel will be provided.

16. Interconnection

16.1 Licensee shall carry the same PEG Channels on its Cable System. If technologically feasible, Licensee shall interconnect to other jurisdictions where the licensing authority(ies) consents to such interconnection. Interconnection shall preserve the quality of PEG programming. This interconnection of government and educational access channels specifically shall not include the secured governmental channels for the Queen Creek Fire Department and the future Queen Creek Police Department, described in Section 12.1. Licensee shall provide the Town with the ability to control such interconnection within the Town by means of a remote control device. The Town hereby consents to reciprocal interconnection of its government and educational access channels.

16.2 All signals to be interconnected will comply with applicable FCC technical standards for all classes of signals.

16.3 The requirements of Queen Creek Town Code Section Article 17-8 are incorporated into this section.

17. New Developments.

17.1 Licensee shall make a good faith effort to keep the cable system technologically current and updated.

17.2 The provisions of the Queen Creek Town Code Chapter 17 are hereby incorporated into this License relating to changes in the cable television laws, regulations, technology, competing services, the needs of the community and other factors affecting cable television.

18. Time is of the Essence.

Time shall be deemed to be of the essence and any failure of the Licensee to perform within the time allotted, or within a reasonable time if a period is not specified, shall be sufficient grounds for the Town to pursue liquidated damages or revocation of the License in accordance with Section 40 (liquidated damages) and Section 43 (revocation).

19. Confidentiality

The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or state law, to the extent Licensee makes the Town aware of such confidentiality. Licensee shall be responsible for clearly and conspicuously stamping the word

"Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under federal or State law.

If the Town believes it must release any such confidential books and records in the course of enforcing this License, or for any other reason, it shall advise Licensee in advance so that Licensee may take appropriate steps to protect its interests. If the Town receives a demand from any person for disclosure of any information designated by licensee as confidential, the Town shall, so far as consistent with applicable law, advise Licensee and provide Licensee with a copy of any written request by the party demanding access to such information within a reasonable period of time, and Licensee shall have the option of filing a lawsuit opposing such disclosure, within ten (10) days of receiving notice from Town. If such lawsuit is filed, and until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by federal and State law, it shall deny access to any of Licensee's books and records marked confidential as set forth above to any person. If no such lawsuit is filed and Town's legal counsel determines that disclosure is required by Arizona law, Town may disclose such documents and shall not be liable to Licensee for such disclosure.

20. Permits, Installation and Service.

20.1 Within ninety (90) days after obtaining the necessary permits, licenses and authorizations, Licensee shall commence whatever construction and/or installation is necessary to begin providing cable services to the Town and Subscribers.

20.2 Installation and operation of the distribution cable shall proceed on a nondiscriminatory basis, without regard for Subscriber affluence or other discriminatory factors.

20.3 Immediately following the commencement of the construction and installation of the system, Licensee shall diligently proceed to deliver cable services as required by this License. Licensee is under no obligation to either (a) install distribution Facilities or (b) activate a Remote Terminal. Licensee may not, however, without permission of the Town deactivate a Remote Terminal.

20.4 Failure to commence and diligently pursue the above requirements and to complete each of the matters set forth above, shall be grounds for liquidated damages or termination of the License.

20.5 The Town Council, in its discretion, may extend the time for the commencement and completion of construction and installation for additional periods if the Licensee acting in good faith experiences delays by reason of circumstances beyond its control.

21. Line Extension

21.1 Pursuant to Article 17-8.C of Town Code, the Licensee must extend and make cable television service available to every unserved dwelling unit within any area of the Town reaching the minimum density of at least thirty-five dwelling units per mile as measured from Licensee's nearest activated Remote Terminal site, except that the Licensee shall not be required to install cable where another authorized Licensee has already done so. Whenever Licensee receives a request for service from a potential Subscriber within the Town and where there are at least 250 Living Units located within four thousand (4,000) feet of a potential Remote Terminal site, Licensee shall extend its Cable System to such potential Subscriber(s) at no cost to said potential Subscriber(s).

21.2 At a minimum, and each year this License is in effect, Licensee shall meet with the Town in the first quarter of the calendar year for a detailed report for the Town the Licensee's construction schedule for the

next year, including mapping (as per section 41 of this agreement). Additional meetings may be coordinated by either party throughout the year, if necessary.

21.3 Licensee shall meet the service drop requirements of the Queen Creek Town Code and Permitting requirements.

21.4 Licensee shall not arbitrarily refuse cable services to a person, firm or corporation in the existing cable service area; however, Licensee is not required to provide cable services to any Subscriber who does not pay the applicable line extension connection fee or cable service charge.

21.5 Licensee shall not deny access to cable service to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

22. Undergrounding

22.1 Licensee shall place all of its new above ground equipment underground, unless technologically impossible, as mutually agreed by Town and Licensee, for such equipment to function properly. No underground Facilities may be moved to poles. Licensee may not install any poles.

22.2 When applicable, the Queen Creek Town Code will govern the placement of Licensee's Cable Facilities.

23. Construction and Technical Standards

23.1 Facilities used by Licensee to provide Cable Services will be constructed in compliance with the Queen Creek Town Code.

23.2 Licensee and Affiliates shall comply with all requirements set forth in the Town of Queen Creek utility, construction, and permitting ordinances and codes.

23.3 Traffic Control.

23.3.1 Licensee and Affiliates shall comply with all traffic regulations set forth by the Maricopa Association of Governments (MAG) and within the Town of Queen Creek engineering and traffic control permit requirements.

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

23.3.3 Licensee or Affiliate shall have the full responsibility and liability for traffic control for this project. Licensee shall submit a Traffic Control Plan to Traffic Engineering for approval one week prior to beginning work under this Agreement. It shall be noted that Traffic under this Agreement shall include all motor vehicles, bicyclists, and pedestrians. Licensee shall not begin construction until the Traffic Control Plan is approved by the Town. An approved Traffic Control Plan shall be maintained onsite during all phases of construction, otherwise construction will cease until the Traffic Control Plan is approved.

23.3.4 During construction it may be necessary to alter traffic control as approved by Traffic Engineering. Alterations to traffic control shall be in accordance with the latest requirements of the Town's engineering and traffic control permits.

23.3.5 The cost for any fees for traffic control shall be Licensee's responsibility. Licensee shall pay any and all applicable barricade fees.

23.3.6 In the event Licensee or its subcontractor(s) damages any traffic signal equipment, traffic signal conduit, loop detectors and/or circuits, it shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience and which is pre-approved by the Town. Any damage repaired by the Town will be billed to Licensee at cost.

23.3.7 Licensee or Affiliate shall notify all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

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

23.3.9 Speed limits shall be strictly enforced.

23.4 Hazardous Substances.

In exercising the privileges associated with the Licensee granted to Licensee under this Cable License Agreement, Licensee and Affiliates shall comply with all applicable Environmental Laws. Licensee shall inspect its Cable System to ensure compliance with all Environmental Laws. Licensee shall be responsible for all environmental investigations, clean-ups, damages, penalties or fines that may result or be related to Licensee's or any Affiliate's non-compliance with any Environmental Laws.

23.5 Backup Power

Licensee or Affiliate shall not use a permanent or semi-permanent internal combustion engine (such as a gasoline or natural gas powered electric generator) to provide backup power at any point or points on the Cable System (other than inside buildings or on land owned by Licensee or Affiliate) without Town's prior written approval. Such approval may be granted subject to conditions, such as relating to testing times (e.g. not in the middle of the night), screening, noise levels, and temperature and safe discharge of hot exhaust gases.

24. Utility Locating System

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

25. Notification of Construction Activity

25.1 Licensee shall be responsible for providing reasonable notice (not less than 24 hours prior to commencing construction activities) to all affected residents prior to system construction or upgrade crews

entering their property. Such notice is not required in emergencies or for normal system repair and maintenance work.

25.2 During such construction activities, all construction personnel and equipment must be clearly identified with the name and telephone number of the cable operator and any pertinent subcontractor.

25.3 Licensee shall comply with all notification requirements set forth in the Town's permitting processes.

26. Restoration of Property

When Licensee and/or its contractors or subcontractors cause any opening or alteration to be made for any purpose in any public streets, public places or property of third parties, the opening or alteration shall be completed and restored with due diligence within seven (7) business days. Licensee shall upon completion of the opening or alteration restore the property, improvements or landscaping disturbed by Licensee or its contractors or subcontractors to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time. All costs for restoration shall be the responsibility of the Licensee, and the property owner will be justly compensated by Licensee for any damages caused by the installation, construction, operation, or removal of the Licensee's Facilities.

27. Removal and Abandonment of Cable System

The requirements of Article 17-10 and 17-12 of the Queen Creek Town Code shall apply in the event that the use of a substantial part of the cable system is discontinued for any reason for a continuous period of twelve (12) months or in the event such cable system or property has been installed in any street or public place without complying with the requirements of this License or Chapter 17 of the Queen Creek Town Code, or if the License has been terminated, canceled or expired without renewal.

28. Temporary Removal of Wire for Building Improvements

To the extent applicable, Licensee is required to comply with the requirements of the Town.

29. Changes Required by Public Improvement

Any changes required by public improvement shall fall under the requirements of the Town of Queen Creek.

30. Methods and Materials of Street Construction

Licensee shall comply with the Town's specifications regarding the methods and materials of street construction, together with the horizontal and vertical location of any underground facility proposed by Licensee within any public property or right-of-way. The Town reserves the right to limit Licensee's work to assure a minimum of inconvenience to the traveling public.

31. Failure to Perform Street Work

The requirements of Article 17-8 of the Queen Creek Town Code are hereby incorporated into this provision. See Exhibit A.

32. Local Business Office Requirement

32.1 Licensee shall maintain a business office for the purpose of receiving inquiries, pay their bills, register complaints and have them resolved, schedule installations and service calls, obtain assistance on technical problems, obtain and return converter boxes, remotes and other customer premises equipment, and receive information on Licensee and its services.

32.2 This business office shall be conveniently located within 5-miles of Town limits and shall be open during all normal business hours, including Monday through Friday, 8am – 5pm.

33. Efficient Communications Services

Licensee shall render efficient telephone communication service and, at a minimum, meet the standards set forth below:

(1) Licensee shall have a publicly listed, local or toll-free telephone number, in accordance with this section, and receive complaints, requests for repairs, service calls, billing inquiries and other subscriber information on a twenty-four (24) hour-per-day, seven (7) day-a-week basis. Trained Licensee representatives will be available to respond to subscriber inquiries during normal business hours;

(2) Licensee shall add additional telephone lines and customer service representatives or take other remedial actions when existing telephone lines are "substantially utilized" or when a pattern of subscriber complaints reflects a need for additional telephone lines and customer service representatives or other remedial actions. For purposes of this section, "substantially utilized" shall occur when Licensee demonstrates an inability to answer, with a customer service representative, and not electronically, its incoming service calls, measured on a quarterly basis, during normal business hours and under normal operating conditions including, but not limited to, those dealing with repairs, sales, installation, billing and inquiries, on average, within the median time of thirty (30) seconds, including wait time, after the connection is made. No caller should be left on hold for more than sixty (60) seconds. Under normal operating conditions, the subscribers will receive a busy signal less than three percent (3%) of the time. Licensee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards unless a historical record on compliance indicates a clear failure to comply; and

(3) Licensee shall establish a telephone answering capability outside normal business hours to answer questions about service calls, service outages and provide proper referral regarding billing and other subscriber information. Inquiries received after normal business hours must be responded to by a Licensee representative on the next business day.

34. Reports

34.1 Licensee shall provide reports in the form and timeframe required by Article 17-9 of the Queen Creek Town Code and all other requirements of that Section. See Exhibit A.

34.2 Licensee shall keep an accurate and comprehensive compilation of Subscriber complaints and the Licensee's action in response to those complaints, in a manner consistent with the privacy rights of Subscribers. All data should be "unscrubbed" (i.e. not removed or amended by Licensee). Upon request, the Licensee shall provide an executive summary report to the Town on an annual basis (unless requested semi-annually by the Town), in the form agreed to by the parties, within one-hundred twenty (120) days of

the end of each year (or the six month period as the case may be) that will include the following information:

- (A) Nature and type of Subscriber complaints;
- (B) A reporting of all unplanned service interruptions, including the frequency, location, and customer impact information if such information is available;
- (C) Any significant construction activities that affected the quality or otherwise enhanced the service of the Cable System;
- (D) Average response time for service calls;
- (E) Phone activity report of calls associated with Cable Services placed into Licensee's call center;
- (F) New areas constructed and available for Cable Service, including Multiple Dwelling Units;
- (G) Video programming changes (additions/deletions);
- (H) Generic copies of all standard documents that customers receive in the normal course of business (e.g. service termination notices and all installation package documents, such as work orders, sample monthly bills and copies of associated bill inserts received by customers); and
- (I) Such other information as reasonably requested by the Town to determine compliance with this Agreement including, but not limited to, the financial information underlying the written report as required by Article 17-9.

35. Inspection of Property and Records

The requirements of Article 17-9 of the Queen Creek Town Code are hereby incorporated into this section. See Exhibit A.

36. Indemnification

The requirements of Article 17-3 of the Queen Creek Town Code are hereby incorporated into this section. See Exhibit A.

37. Insurance.

37.1 During the Term of the License, Licensee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense the following type and limits of insurance:

37.1.1 Worker's compensation insurance meeting Arizona statutory requirements and employer's liability insurance with minimum limits of two million dollars (\$2,000,000.00) for each accident.

37.1.2 Comprehensive commercial general liability insurance with minimum limits of ten million dollars (\$10,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall include coverage for: products and completed operations liability; independent contractor's liability; and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

37.1.3 Waiver of subrogation. The policies required by the Agreement shall contain a waiver of transfer rights of recovery (subrogation) against the Town, its agents, representatives, directors, officials, elected officials, officers, employees, and volunteers for any claims arising out of the work of Contractor.

37.1.4 Broadcasters liability coverage for loss or damage arising out of publications or utterances in the course of or related to advertising, broadcasting, telecasting, or other communication activities conducted by or on behalf Licensee with minimum limits of ten million dollars (\$10,000,000.00) as the combined single limit for each occurrence.

37.1.5 Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Licensee, its employees and agents, with bodily injury insurance and property damage insurance, with minimum limits of two million dollars (\$2,000,000.00) as the combined single limit for each occurrence for bodily injury and property damage.

37.1.6 The coverage amounts set forth above may be met by a combination of underlying primary and umbrella policies so long as in combination the limits equal or exceed those stated.

37.2 This License shall not be effective unless and until each of the foregoing policies of insurance as required in this subsection has been delivered to the Town Clerk. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this subsection.

37.2.1. The Licensee shall carry workers' compensation and employer's liability insurance to cover obligations imposed by federal and state statutes having jurisdiction of Licensee's employees engaged in the performance of services under this License.

37.2.2 The Town may require increases in the amount or types of coverage no more frequently than every three (3) years, based on increases in the CPI, so as to ensure full protection of the Town and the public. Licensee shall have sixty (60) days from the date of notification from the Town to comply with any increase.

37.2.3 Licensee shall include all subcontractors and sub-subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor and sub-subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for the Licensee.

37.2.4 A certificate evidencing the insurance required by this License and listing the Town as an additional insured shall be provided within ten (10) business days of the Effective Date of this License. The certificate shall be sent to the following address:

Town of Queen Creek
Attn: Town Clerk
22358 S Ellsworth Rd
Queen Creek, AZ 85142

Town of Queen Creek
Copy: Risk Manager
22358 S Ellsworth Rd
Queen Creek, AZ 85142

37.3 Licensee shall maintain such coverage continuously throughout the term of this License and without lapse and, with respect to any of the required insurance that is provided under a claims-made form, for a period of five (5) years beyond the expiration of this License, so that any occurrences occurring during the License term that give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

38. Intentionally omitted.

39. Performance Bond.

39.1 Within thirty (30) days of the Effective Date of this License, Licensee shall file and maintain until termination of this Agreement, a performance bond in favor of Town in the sum of at least of fifty thousand dollars (\$50,000.00) to ensure Licensee's faithful performance of its obligations imposed by this License. The performance bond shall provide the following conditions:

39.1.1. There shall be recoverable by the Town from the principal and surety, any and all fines and penalties due to the Town and any and all damages, losses, costs, and expenses suffered or incurred by the Town resulting from the failure of the Licensee to faithfully comply with the material provisions of this License and other applicable law; comply with all orders, permits and directives of any agency or body having jurisdiction over its acts or defaults; pay fees due to the Town; or pay any claims or liens due the Town. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

39.1.2. The performance bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled, or allowed to lapse, until sixty days after receipt by the council, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

39.2 The bond shall be issued by a company authorized to do business in the State of Arizona, and found to be acceptable by the Town Attorney.

39.3 The bond shall remain in effect for the entire term of this License.

40. Liquidated Damages

40.1 The Licensee understands and agrees that failure to comply with any time and performance requirements in this License or Article 17-9 of the Queen Creek Town Code, will result in damage to the Town, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the parties hereby agree to the liquidated damages specified below. The following amounts per day or part thereof may be chargeable to the Letter of Credit from the date Licensee fails to cure any default pursuant to Section 40.2 below for the following concerns:

- (a) Failure to comply with Sections 20 and 21 - unless the Town Council specifically approves the delay by motion or resolution --\$100.00 per day;
- (b) Each failure to provide data, documents, reports and information in a timely manner as required --\$50.00 per incident and/or violation per day;

- (c) Each failure to properly restore the public right-of-way or to correct related violations of specifications, code, ordinance or standards within seven working days of having been notified by the Town to correct such defects --\$100.00 per day;
- (d) Each failure to comply with customer service standards within this License (Exhibit B) and within Queen Creek Town Code Chapter 17 --\$50.00 incident per day;
- (e) Each failure to test, analyze and report on the performance of the system following a written request from the Town --\$25.00 per incident per day;
- (f) Failure to provide in a continuing manner the type of services proposed in the application, renewal proposal or this License, unless the Town Council has specifically approved a modification of the Licensee's obligation -\$500.00 per day;
- (g) Failure to comply with such standards within three (3) months following adoption of a resolution by the Town Council finding that Licensee has failed to comply with operational, maintenance or technical standards --\$500.00 per day;
- (h) Any other material action or non-action by the Licensee as agreed upon by the Town and Licensee, such agreement shall not be unreasonably withheld by either party--\$150.00 per day.

40.2 Prior to assessing any of the liquidated damages set forth in this License and Chapter 17 of the Town of Queen Creek Code, the Town Manager shall give licensee seven days written notice of its intention to assess damages. If the Town Manager concludes that a Licensee is in fact liable for liquidated damages pursuant to this Section 40, the Town Manager shall issue to Licensee by certified mail a Notice of Intention to Assess Liquidated Damages. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. The Licensee shall, within 30 days of receipt of such notice:

- (a) Respond to the Town in writing, contesting the Town's assertion of violation and providing such information or documentation as may be necessary to support Licensee's position; or
- (b) Cure any such violation (and provide written evidence of the same), or, in the event that, by the nature of the violation, such violation cannot be cured within such 30 day period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. Licensee shall report to the Town, in writing, at 30 day intervals as to Licensee's efforts, indicating the steps taken by Licensee to cure said violation and reporting Licensee's progress until such violation is cured.

40.3 In the event that License contests the Town's assertion of violation or fails to respond to the Town's notice of intent to assess liquidated damages, within 14 days the Town shall schedule a hearing in accordance with the procedures set forth in Article 17-9 of the Queen Creek Town Code.

41. Location of Licensee's Facilities/Mapping

41.1 Licensee shall comply with the requirements of the Queen Creek Town Code and Ordinances as it relates to mapping.

41.2 Licensee shall maintain as-built drawings of the Facilities providing Cable Services located within the right-of-way and furnish a hard copy to the Town. If and when Licensee is able to provide an electronic copy in ESRI-compatible mapping format (or in a mapping format compatible with the current Town electronic mapping format as specified by the Town), it shall do so. Upon completion of new or

relocation construction of underground Facilities in the right-of-way, Licensee shall create and maintain precise, up-to-date maps of the underground Facilities providing Cable Services 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. Licensee will also provide surface-location marking of any of Licensee's Facilities that are located underground within any public right-of-way within ten (10) business days of installation.

41.3 If requested by the Town, Licensee will provide route maps which are the as built maps with only the following information removed: information on the number of lines, whether the lines are copper or fiber and the nature of any electronics. Concrete pads for pedestals and enclosures for equipment or pedestals shall be shown on route maps.

42. Emergency Work

Town reserves the right to move, remove or damage any portion of the Licensee's equipment and Facilities as may be required in any emergency as determined by the Town. In such event, neither Town nor any agent, contractor or employee thereof shall be liable to Licensee or its customers or third parties for any damages caused them or the Facilities, such as for, or in connection with, protecting, breaking through, moving, removing, altering, tearing down, or relocating any part of the Cable System. Prior to taking any actions pursuant to this section, the Town shall provide, if feasible, reasonable notice to Licensee of the emergency to allow Licensee the opportunity to protect or repair Licensee's Facilities involved in the emergency.

43. Revocation

This License incorporates by reference Article 17-10 of the Queen Creek Town Code. Prior to any revocation of its License, Licensee shall be afforded all opportunities of due process outlined in the Queen Creek Town Code Chapter 17. See Exhibit A.

44. Failure of Town to Enforce a License. No Waiver of the Terms Thereof

Licensee shall not be excused from complying with any of the terms and conditions of this License by any failure of the Town upon anyone or more occasions to insist upon or to seek compliance with any such terms or conditions.

45. Representations and Warranties

45.1 The Licensee expressly acknowledges that upon accepting this License, it did so relying upon its own investigation and understanding of the power and authority of the Town to grant this License.

45.2 The Licensee by acceptance of this License acknowledges that it has not been induced to enter into this License by any understanding or promise or other statement whether verbal or written by or on behalf of the Town or by any third person concerning any term or condition of this License not expressed herein or in Chapter 17 of the Queen Creek Town Code.

45.3 The Licensee further acknowledges by acceptance of this License that it has carefully read the terms and conditions hereof and Chapter 17 of the Queen Creek Town Code in effect as of the Effective Date of this License, and is willing to accept all terms and conditions contained in Chapter 17 of the Queen Creek Town Code to the extent such requirements are not inconsistent with the express terms of this License.

The Licensee hereby certifies that none of the obligations imposed upon it by this License is, in the Licensee's informed opinion, commercially impracticable.

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

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

45.6 The Licensee further acknowledges that it was represented throughout the negotiations of this License by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding this License.

46. Prohibitions

Neither Licensee nor any of its officers or employees shall receive referral fees or gratuities from any television or radio sales or repair business.

47. Notice

Unless specifically directed otherwise by another section of this License, all notices which Town may give to a Licensee or which a Licensee may give to Town shall be given in writing and either delivered in person, sent by electronic transmission, or by first class mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service and addressed as applicable below. Such notices shall be deemed effective upon receipt or in the case of a notice sent by mail, received one day after deposit in the U.S. mail.

To: Qwest Broadband Services, Inc. d/b/a CenturyLink 1801 California St., 10th Floor Denver, CO 80202

With copies to: Qwest Broadband Services, Inc., d/b/a CenturyLink 20 East Thomas Rd, 1st Floor Phoenix, AZ 85012

To the Town: Town of Queen Creek, Attn: Town Manager, 22358 S Ellsworth Rd, Queen Creek, AZ 85142

With copies to: Town of Queen Creek, Attn: Town Clerk, 22358 S Ellsworth Rd, Queen Creek, AZ 85142

Town of Queen Creek, Attn: Workforce and Technology Director, 22358 S Ellsworth Rd, Queen Creek, AZ 85142

Town of Queen Creek, Attn: Town Engineer, 22358 S Ellsworth Rd, Queen Creek, AZ 85142

Town of Queen Creek, Attn: Town Attorney, 22358 S Ellsworth Rd, Queen Creek, AZ 85142

48. Force Majeure

With respect to any provision of this License the violation or noncompliance with which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Licensee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, or similar events, the occurrence of which was not reasonably foreseeable by Licensee and is beyond its reasonable control.

49. Legal Workers

49.1 Licensee warrants to Town that Licensee and all of its contractors and subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that there is compliance with the E-Verify Program under A.R.S. § 23-214(A).

49.2 A breach of the foregoing warranty by Licensee shall be deemed a material breach of this License that is subject to penalties up to and including termination of this License.

49.3 Town retains the legal right to inspect the papers of any employee of Licensee contractor or subcontractor who works pursuant to this License to ensure that they are complying with the warrant given above.

49.4 Town may conduct random verification of Licensee's contractors' and subcontractors' employment records to ensure compliance with the warranty given above.

49.5 Licensee shall indemnify, defend and hold Town harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

50. Bankruptcy

The rights and privileges herein granted shall not be assignable nor transferable in any bankruptcy proceedings, trusteeship, receivership or by operation of any law. In the event of such assignment or transfer, this grant shall terminate forthwith, and Licensee shall not sell, lease, assign or otherwise alienate this grant of any privilege hereunder without the prior approval of the Town Council.

51. Continuity of Service Mandatory

51.1 It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to Licensee are honored.

51.2 If the License terminates, Licensee shall cooperate with the Town to ensure continuity of Cable Service to all Subscribers for a period not to exceed ninety (90) days. Said period may be extended by mutual agreement between the Town and Licensee. During such period, Licensee shall be entitled to the revenues for any period during which it operates the cable system and will pay the applicable License Fee.

52. Conflict of Interest

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

53. Severability

If any section or provision of this License or any ordinance, regulation, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the section or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other section or provision hereof, and the parties shall in good faith renegotiate that section or provision.

54. Remedies Not Exclusive. The rights and remedies of Town set forth in this License shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. Town and Licensee understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by Town of anyone or more of such remedies shall not preclude the exercise by Town, at the same or different times, of any other such remedies for the same Uncured Event of Default.

55. Governing Law

It is mutually understood and agreed that the provisions of this License are subject to applicable federal law, including but not limited to the Cable Act and the rules, regulations, and orders of the FCC, as well as any Arizona law not in conflict with such federal law. This License shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the state and federal courts located within Maricopa County, Arizona.

56. Application of Town Codes and Ordinances

The fact that compliance with certain specified Town ordinances and regulations is expressly required by this License shall not be interpreted to mean that compliance with any and all ordinances or regulations of the Town is not similarly required.

57. Amendments

This License may be modified only through a written amendment executed by authorized persons for both parties.

IN WITNESS WHEREOF, the parties hereto have executed this License as of _____.

APPROVED AS TO FORM:

TOWN OF QUEEN CREEK, ARIZONA

By: _____
Mariscal, Weeks, McIntyre &
Friedlander, P.A.
Town Attorneys

By: _____
Mayor

Attest: _____
Town Clerk

QWEST BROADBAND SERVICES, INC.,
a Colorado corporation d/b/a CenturyLink

By: _____
Its: _____

Exhibit A-Chapter 17, Queen Creek Town Code.
Exhibit B-Customer Service Standards

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CHAPTER 17 CABLE COMMUNICATIONS¹

ARTICLE 17-1 TITLE

This chapter shall be entitled the Town of Queen Creek Cable Communications Chapter.

ARTICLE 17-2 PURPOSE

It is the purpose of this chapter to provide for the regulation and control of cable television systems operating within the town by the council, in the public interest; to authorize the council to grant one or more non-exclusive licenses to operate cable communications systems; to provide for the use of town streets, public utility easements, public rights of way and public places by licensee and compensation to the town for use of same; and to require that the provisions of this chapter be applicable to all licenses granted by the council. It is the further purpose and intent of this chapter to facilitate the provision of high quality cable television service to the citizens of the town while minimizing disruptions of the public domain for system installation and maintenance.

ARTICLE 17-3 DEFINITIONS

For purposes of this chapter, the following words, abbreviations and their derivations shall have the meanings given herein. Words not defined are given the meaning in Section 602 of the Cable Act, 47 U.S.C. Subsection 522, and, if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must" or "shall" are mandatory and the word "may" is permissive.

"Access channel" shall mean one or more channels dedicated in whole or in part for local non-commercial programming which is set aside for educational use or governmental use without a charge by the licensee for channel usage and which is not originated by a cable company; provided that such access programming shall not include:

1. the retransmission of local television broadcast signals, or
2. programming produced by persons unaffiliated with the cable company under the provisions of Section 612 of the Cable Act.

"Applicant" means any person that applies for a license.

"Application" means a proposal to construct and/or operate a cable system within the town, transfer a license, renew a license or modify a license. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

¹Ordinance 156-99

"Basic cable service" or "basic service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq., as amended.

"Cablecasting" means a non-broadcast signal that originates within the facilities of the cable communications system.

"Cable service", unless defined in the license agreement, means:

1. one way transmission to subscribers of:
 - a. video programming, or
 - b. other programming service, and
2. subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Cable television system" or "cable system" unless defined in the license agreement, means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the town. Such term does not include:

1. Facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses or crosses (above or through) any public right-of-way;
3. A facility of a common carrier that is subject, in whole or part, to the provision of Title II of the Communications Act of 1934, 47 U.S.C. Subsection 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers or
4. Any facility of any electric utility used solely for operating its electric utility systems. Furthermore, if there is a connection of any such exempt system to a licensed system such exemption shall cease.

"Change of service" means all requests by existing subscribers for modification to their cable service, such as additions or deletions of premium services, additional outlets, remote controls FM service, etc. Such terms shall not include initial installation of basic cable service, total disconnection of basic cable service or service calls.

"Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and is capable of delivering a television channel.

"Complaint" is a subscriber or citizen issue, presented in verbal or written form, to the licensee or the town relating to any aspect of the licensee's performance under this chapter.

"Control of licensee or applicant" means the legal or practical ability to direct the affairs of the licensee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest. In the case of a limited partnership, a change in limited partner interests shall not constitute a change in control where the limited partners have no power to participate in the management of the partnership, and the general partner retains full power.

"Converter" is an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television set.

"Council" means the town Council of the Town of Queen Creek, Arizona, or such representative person or entity as may be designated initially or at some future date to act on cable television matters.

"Density" means the number of potential subscriber households per mile of cable system. Dwelling units shall be counted when they are within 250 feet of any portion of the cable distribution system including trunk and feeder cable lines.

"Dwelling unit" means any separate and distinct structure or part thereof which exists in finished form, occupied or capable of year-round occupation, and serves as a residence to one or more persons. Included in this definition, but not limited to are: all single family homes, each apartment unit, each condominium unit, patio homes, guest quarters and similar type structures.

"FCC" means the Federal Communications Commission or successor agency.

"Gross revenues", unless defined in the license agreement, shall mean all cash, credits, property of any kind or nature, or other consideration, less related bad debts up to a maximum of one and one-half percent annually of such cash, credits and property, received directly or indirectly by a licensee, its affiliates, subsidiaries, parent and any person, firm or corporation in which a licensee has a financial interest or which has a financial interest in a licensee, arising from or attributable to the licensee's operation of its cable television system within the town, including, but not limited to:

1. Revenue from all charges for services provided to subscribers;
2. Revenue for all charges for the insertion of commercial advertising upon the cable system;
3. Revenue from all charges for the leased use of studios;
4. Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a subscriber to receive cable service;
5. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional users.
6. Revenue from all charges for the use of or lease of leased access channels or band width.

CABLE COMMUNICATIONS

7. Revenue from the production or transmission over the cable system of video programming by licensee including programming produced by its mobile facilities.
8. Any other income derived from the cable system.

Gross revenues shall not include taxes collected by licensee on behalf of any governmental authority; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary services provided to licensee's employees and is required by this chapter or any license; and dividends or other distributions made in respect of any stock or securities, or value received by a licensee or any of its affiliates, subsidiaries or parent relating to licensee services or through cooperative advertising.

Gross revenues shall not include cash, credit, property of any kind or nature or other consideration received by a licensee's affiliates, subsidiaries, parent or any person, firm or corporation ("affiliate") in which a licensee has a financial interest or which has financial interest in a licensee for any sales of advertising on the cable system, services to provide programming on the cable system, production services and/or telecommunication services which are cable services when such services are provided by an affiliate, which has all the following characteristics: the affiliate is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records) and a separate mission; it makes payments to licensee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than licensee in the same industry as licensee; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of license fees on gross revenues. Nothing contained in this exclusion from gross revenues shall be interpreted to exclude from gross revenues such cash, credit, property of any kind or nature or other consideration which would be considered the licensee's gross revenues derived from the operation of the cable system under the Cable Act. Except for gross revenue from such sales of advertising on the cable system, services to provide programming on the cable system, production services or telecommunication services which are cable services received by such affiliate, this paragraph shall not exclude from gross revenues any source of gross revenues which an existing licensee itself is receiving at the time it is granted a license under this chapter.

When a licensee (or an affiliate) holds one or more other cable television licenses in Maricopa County, Arizona and/or Pinal County, Arizona and receives and allocates gross revenues from paragraphs 2, 6 and 7 under this definition, then gross revenues derived from paragraphs 2, 6 and 7 under this definition, shall be allocated pro rata to the town based on the ratio of the number of subscribers of licensee (or an affiliate), in the town to the number of subscribers of licensee (or an affiliate) in all the jurisdictions in Maricopa County, Arizona and/or Pinal County, Arizona, in which licensee (or an affiliate) holds a cable license. If a licensee does not allocate its gross revenues derived from paragraphs 2, 6 and 7 under this definition from such other jurisdictions then the number of subscribers in such jurisdictions shall not be included in the total number of subscribers in all other jurisdictions.

"Interconnect" or "interconnect of facilities" is the connection of one or more channels of licensee's system with other cable systems by direct cable, microwave link, satellite or other appropriate methods.

"Leased channel" or "leased access channel" means any channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C. Subsection 532, for commercial use by persons unaffiliated with the licensee.

"License" means the non-exclusive right and authority, granted by the council, as described in this chapter, to construct, maintain and operate a cable television system through use of the public streets or public places in the town. This term does not include any license or permit that may be required by the chapter or other laws, ordinances or regulations of the council for the privilege of transacting and carrying on a business within the town or for disturbing the surface of any street or public thoroughfare.

"Licensee" means the person granted a license agreement by the council and any lawful successor, transferee or assignee of said person.

"License agreement" means a contract entered into in accordance with the provisions of this chapter between the council and a licensee that sets forth the terms and conditions under which the license will be exercised.

"Malfunction" means an equipment or facility failure that results in the loss of a viewable signal on one or more channels. A "major malfunction" has occurred when five or more channels are affected.

"Outage" means an equipment or facility failure that results in a total loss of signal on all cable channels affecting three or more subscribers within one linear mile during any one hundred twenty minute period.

"Overbuild" means a cable system constructed to serve subscribers currently served by an existing cable system, including those parts of an existing system that will be constructed within six months pursuant to plans filed with the council.

"PEG access channel" or "PEG channel" means any channel set aside for educational use or governmental use without a charge by the licensee for channel usage.

"Person" means any individual, corporation, joint venture, association, syndicate, trust, partnership or any other business entity who holds or applies for a license from the council.

"Property of licensee" means all property owned, installed or used within the town by a licensee in the conduct of a cable television system business.

"School" means any public educational institution, which is accredited by a nationally recognized institution, including primary and secondary schools, colleges and universities.

"Service call" shall result when service problems occur relating to:

1. Fewer than three complaints regarding total loss of signal on all channels within within one linear mile during any one hundred twenty minutes,
2. A degraded signal or picture on one or more channels, or
3. Property damage by licensee employees or authorized contractors.

"Standard drop" means that cable connection which requires no more than a one hundred and twenty-five foot drop measured from the nearest point of subscribers home or place of business to the nearest active tap on the cable system, involving only one outlet and standard materials

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and does not involve a wallfish. In addition, a standard drop shall exclude custom installation work including specific subscriber requested work that requires nonstandard inventory or cable routing that requires construction methods exceeding reasonable underground or aerial work.

"Street" means the surface, the air space above the surface and the area below the surface of any public street, road, highway, path, sidewalk, alley, court, easement or other public right-of-way or public place now or hereafter held by the town, County of Maricopa, County of Pinal or State of Arizona for the purpose of public travel or public utilities.

"Subscriber" means any individual or entity legally receiving, for any purpose, cable services of the licensee's cable television system including, but not limited to, the basic service, redistribution of television broadcast signals, radio signals, licensee's original cablecasting, community programming, government and education access channels and other services such as leased channels, data and facsimile distribution, premium and pay per view channels and police, fire and similar public service communication.

"Town" means the Town of Queen Creek, a municipal corporation of the State of Arizona, in its present boundaries, and its future boundaries as increased or decreased by law.

"Town manager" means the town Manager of Queen Creek, Arizona, or his designee, as will be communicated to the licensee in writing, if and when such designation occurs.

"Two-way capability" means the incorporation in a cable system of all appropriate design and engineering characteristics so that two-way transmission, including addressability, over the system can be implemented with a minimum of expense.

ARTICLE 17-4 AUTHORITY TO GRANT LICENSE, LICENSE REQUIRED, NON-EXCLUSIVE LICENSE

- A. Pursuant to A.R.S. § 9-505, as amended, the council has the authority to issue non-exclusive licenses to construct, install, maintain and operate cable communication systems within the town, and to regulate those cable operations. The council's authority is also based in common law pursuant to the town's ownership of the fee simple title to the streets of the town as well as its legal interest in easements and licenses granted to it by property owners for the purposes of municipal use.
- B. No provision of this chapter shall be deemed or construed to require the granting of a license.
- C. No person shall construct, install or maintain a cable system within any street in the town, or within any other public property of the town, unless a license agreement authorizing such use of said streets or property is in full force and effect.
- D. Any person providing cable services or maintaining a cable system in the town pursuant to a license granted by Maricopa County, Arizona and/or Pinal County Arizona, prior to the incorporation of the town, may continue to provide or maintain such system until such time as the town has granted its first license. If the person providing service or maintaining a system does not apply for and receive one of the first town licenses, then the person shall

have one hundred twenty days from the effective date of the first licenses to provide for the abandonment or removal of the system.

- E. Any license issued by the council shall be non-exclusive, and the council specifically reserves the right to grant such additional licenses for cable systems as the council deems appropriate.

ARTICLE 17-5 APPLICATION PROCEDURES

- A. Any person desiring to construct, install, maintain or operate a cable communication system within the town shall submit an application to the council. This application shall be filed with the town clerk, and must conform to Article 17-9 of this chapter and must address, at a minimum, the following information:
 - 1. The name, title, address, phone numbers and ownership interests for all owners holding five percent or more of the applying entity, including key contact and management personnel.
 - 2. The proposed construction or service area, construction schedule, likely time line, and construction standards, practices and procedures.
 - 3. The proposed service levels, including channel capacity, program selections, rates, customer service standards, problem resolution process, customer contact locations.
 - 4. Other pertinent information the applicant deems appropriate and helpful to the town in assessing the credibility and worthiness of the proposal.
- B. All applications filed with the town clerk remain the property of the town. Applications submitted may be returned as incomplete if they do not comply with all requirements of the town. The council reserves the right to issue a request for proposals at any time.
- C. Applications for consent to transfer a license or an interest in a license must conform to the requirements of Articles 17-9 and 17-12 of this chapter, while applications for renewal must conform to Articles 17-9 and 17-11.
- D. An application for modification of a license agreement must conform to Article 17-9 of this chapter and include, at a minimum, the following information:
 - 1. The specific modification requested;
 - 2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved;
 - 3. A statement as to whether the modification sought is pursuant to 47 U.S.C. Section 545, and, if so, a demonstration that the requested modification meets the legal standards of said section; and
 - 4. Any other information necessary for the council to make a determination.

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- E. To be acceptable for filing, an application must be submitted with any required filing fee, be properly executed on the forms prescribed by the council, and contain the information required by this chapter, and meet the requirements of any applicable request for proposals.

ARTICLE 17-6 STANDARDS FOR GRANTING OR DENYING LICENSE APPLICATIONS

- A. All applications received that are acceptable for filing shall be placed in a public file with the town clerk.
- B. The council shall give full consideration to each application. The following factors may be deemed appropriate and shall be considered:
 - 1. The financial qualifications of the applicant and its ability to construct and operate the proposed system.
 - 2. The need for and quality of the service proposed, including rates to subscribers, whether or not rates are to be regulated.
 - 3. The technical, legal and character qualifications of the applicant, including applicant's willingness to abide by the limitations of this chapter.
 - 4. Technical and performance adequacy of the proposed system design, plant and equipment, including any specific knowledge or experience the council may have with the applicant.
 - 5. Where an applicant proposes to overbuild an existing cable system, the economic and technical feasibility of multiple cable systems, the impact on the existing licensee's system and the public interest, if the application were to be granted.
 - 6. All other factors which may affect the public interest.
- C. Thereafter, the council shall make a determination whether to approve or disapprove each application.

ARTICLE 17-7 LICENSE AGREEMENT

- A. Upon the approval of an application by the council, the applicant shall negotiate and execute a license agreement within sixty days. If the council and the grantee fail to agree on the terms of a license agreement within the sixty days of the date that the council's action approving the application, the approval shall expire without further action by the council. This time limit may be extended by the council for good cause. The license agreement shall incorporate all terms and provisions of this chapter wherein a requirement is placed upon the licensee, either expressed or implied by this chapter. The licensee shall expressly and specifically agree to accept the terms of and be bound by the terms of this chapter.

B. A license agreement shall have the following characteristics:

1. It authorizes use of the public rights-of-way for installing cables, wires, lines and other facilities to operate a cable system, but does not expressly or implicitly authorize the licensee to provide service to, or install cable, wires, lines or any other equipment or facilities upon property without owner consent [except for compatible easements or rights-of-way pursuant to 47 U.S.C. Section 541(a)(2)], or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners. It also authorizes the licensee so to use, operate and provide similar facilities or properties rented, licensed or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the town; provided, however, that neither the licensee nor the third party shall be relieved of any regulation or obligations as to its use of such facilities in the streets.
2. It is subject to the paramount right of use of the public rights-of-way by the council and the public for public purposes. The council reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.
3. It is nonexclusive and will not expressly or implicitly preclude the issuance of other licenses to operate cable systems within the town.
4. It conveys no property right to the licensee or right to renewal other than as may be required by state or federal law.
5. It constitutes a contract between the licensee and the council once it is approved by the council and executed by both parties. A licensee contractually commits itself to comply with the terms, conditions and provisions of the license agreement and with all applicable laws, ordinances, codes, rules, regulations and orders.
6. The term of the license agreement shall not exceed fifteen years commencing on its effective date.
7. A licensee shall execute a hold harmless agreement as part of the license agreement which shall set forth the obligation of the licensee over and above the insurance requirements contained in the license and this chapter.
8. A licensee shall be subject to all laws, rules and regulations of the State of Arizona and the United States Government.
9. Any of the provisions of this chapter may be amended by the council at any time. This chapter and such amended provisions shall be applicable to all existing license agreements; provided, however, that this chapter and such amended provisions shall not be applicable to an existing agreement where it would contravene a contractual right of the licensee under the license agreement, nor pose additional contractual burdens on the licensee.
10. All notices and communications from a licensee to the council pursuant to this chapter or a license agreement shall be sent to the town manager unless the licensee is otherwise directed.

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11. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the license agreement shall grant the right and privilege to the licensee to provide non-cable communications services. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the council shall retain all authority to regulate non-cable telecommunication services to the extent necessary to protect the public interest and to ensure compliance with all provisions of this chapter.

ARTICLE 17-8 OPERATING REQUIREMENTS FOR CABLE COMMUNICATIONS SYSTEMS

A licensee shall conform to the following minimum standards relative to the construction, operation and maintenance of a cable communications system in the town. It is not the intent of this article to prevent any licensee from providing more than the required minimum to meet the standards listed below.

A. Rights of Individuals, Subscribers and Users.

1. A cable system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, channels, studios and other services to all residents and other entities having a legitimate use of the system. A licensee shall not discriminate in terms of rates, terms of service or extension of service on the basis of age, race, creed, sex, religion, national origin or marital status. Nor shall a licensee fail to extend service to any part of the town on the basis of the income of the residents. A licensee shall maintain a business office open during normal business hours with listed local or toll-free telephone numbers to allow reasonable access by subscribers and members of the public. Unless a waiver is granted by the council, said office shall be located within ten miles of the town's corporate limits. When the office is closed, an answering machine or similar device, capable of receiving service complaints and inquiries must be employed.
2. Licensee shall maintain a written record listing date of all complaints, identifying the subscriber or citizen, describing the nature of the complaint and when and what action has been taken by the licensee, if any, in response thereto; such record shall be kept at licensee's office and shall be available for inspection during regular business hours without further notice of demand of the town manager. A summary of such records must be retained for not less than one year. The licensee shall notify each subscriber at the time of initial subscription to service of the procedure to reporting and resolving complaints.
3. A licensee shall establish procedures for the investigation and resolution of all complaints including, but not limited to, those regarding the quality of service and equipment malfunction. A copy of such procedures shall be provided to the council upon request.
4. A licensee must provide each subscriber at the time cable service is installed, the following:

- a. written instructions for placing a service call, filing a complaint or requesting an adjustment, including the phone number and address of licensee's office;
 - b. the telephone number of the town office responsible for administration of the cable license;
 - c. a schedule of rates and charges for all available services;
 - d. copies of the service contract, including disconnect and reconnect procedures and charges;
 - e. a subscriber handbook and upon request any other written policies applicable to subscribers.
5. A licensee shall establish and conform to the following policy regarding refunds to subscribers and users:
 - a. If the licensee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the licensee shall provide such service or equipment within thirty days of the collection of the deposit or charge or it shall refund such deposit or charge within five days thereafter upon request of the subscriber. The subscriber must be advised of this right of refund at the time the order is placed.
 - b. If any subscriber or user terminates any monthly service during a period of time for which said subscriber or user has made an annual or other payment in advance, the appropriate pro rata portion of said payment shall be refunded by the licensee.
6. The following requirements shall apply to disconnections:
 - a. There shall be no charge for total disconnection of cable service unless such charge was disclosed at the time the subscriber ordered service. All cable communications equipment shall be removed within a reasonable time from a subscriber's property at the subscriber's request, such time not to exceed thirty days from the date of the request.
 - b. If any subscriber fails to pay a properly due monthly subscriber's fee or other charge, the licensee may disconnect the subscriber's service outlet; provided, however, that such disconnection shall not be effected until thirty days after the due date of the charges and shall include a prior written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper charges or fees, including the payment of any reconnection charge, the licensee shall promptly reinstate the service.
7. A licensee may interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after prior notice to subscribers and the council of anticipated interruption. No prior notice

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shall be required for the performance of system maintenance work requiring a maximum of one hour between the hours of six a.m. and twelve midnight, and four hours between the hours of twelve midnight and six a.m.

8. A licensee shall at all times comply with the subscriber privacy provisions of 47 U.S.C. Section 551.
9. No equipment shall be installed by the licensee for subscriber service without first securing a service request from the owner or resident of any private property involved, except in public utility easements.
10. A licensee shall not originate or knowingly permit subliminal transmission at any time for any purpose whatsoever.
11. A licensee shall provide a notice to each subscriber no less than thirty days prior to any change in the schedule of rates and charges for all available services.
12. A licensee shall provide leased access channels as required under 47 U.S.C. Section 532. In the event that said federal provisions should cease to apply, the council reserves the right to promulgate other leased access requirements which shall apply, not to exceed those requirements specified in 47 U.S.C. Section 532.
13. A licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, 47 U.S.C. Section 554, state statutes and local regulations, and as the same may be amended from time to time.

B. Cable System Construction Timetable.

1. A cable system shall be constructed in accordance with the provision of the license agreement.
2. It is the policy of the council to require construction of a cable system designed to serve subscribers in an area licensed by the council as rapidly and expeditiously as possible. The licensee shall immediately upon granting of the license agreement diligently pursue and obtain all necessary permits from the appropriate governmental agencies, utility companies and others as necessary to comply with the provision of this chapter and other federal, state and town laws, codes and resolutions. However, no construction shall begin until the notification requirements set forth elsewhere in this chapter are satisfied.
3. A cable system shall be constructed pursuant to a construction timetable specified in the license agreement.
4. Any delay beyond the terms of the timetable specified in the license agreement will be considered a violation of the terms of this chapter and the license agreement. Unless the licensee can establish that the delay was due to factors beyond its control, the licensee may be considered in default of the license agreement and the town manager may take whatever action the town manager is entitled to under this chapter and the license agreement.

5. The licensee shall not be considered in default of the applicable construction schedule if the council approves a modification of the schedule change in advance. In submitting a request for a construction schedule modification, the licensee must fully explain the reasons for the delay, in writing. The delay must be disapproved by the council if it is not reasonably justified, would have unreasonably discriminating results or would unduly delay service to an area. Such a modification request shall be considered granted unless the licensee is notified by the council to the contrary in writing within forty-five days of the date on which the request was filed.
6. The council may require a licensee to report on construction progress and provide information showing specifically whether the construction schedule is being met and the reasons for the delay. The town manager shall determine the format to be used for the report and the frequency of reporting.
7. Where appropriate and reasonable, a licensee shall schedule construction activities to coordinate with any town construction on streets so as to avoid unnecessary inconvenience to the public.

C. Line Extension Policy.

Unless the license agreement provides otherwise, a licensee shall be required to extend its cable system pursuant to the following requirements:

1. Upon reasonable request for service by any person located within any area of the town that meets density requirements of paragraph 2 of this subsection, the licensee shall, within ninety days, furnish the requested service to such person, unless prevented from providing said service due to factors outside licensee's control, such as permit restrictions, private easement considerations, etc. If such service has not been implemented within one hundred twenty days of said request, the council may impose liquidated damages for each day thereafter.
2. The licensee must extend and make cable television service available to every unserved dwelling unit within any area of the town reaching the minimum density of at least thirty-five dwelling units per mile of plant as measured from licensee's nearest activated trunk or feeder line, whether the existing plant is aerial or underground, except that the licensee shall not be required to install cable where another authorized licensee has already done so. Licensee shall complete line extensions to an area reaching a density of at least five homes within 1,056 feet of existing active cable plant, or where an area has more than seven homes, at least one home per 151 street feet including the distance to existing active cable plant. Upon request, this density requirement may be modified by the council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable if licensee's compliance with said requirement would create a significant adverse impact on the capital costs of licensee's Queen Creek cable system.
3. The licensee shall prevent unnecessary damage to streets and property by installing cables or conduits underground in new single family subdivisions at the same time and in the same trench as telephone, electric or similar services are installed. Given reasonable notice, the licensee shall install underground cable or

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conduit in all new subdivisions of five or more dwelling units within the service area at the same time and in the same trench as telephone, electric or similar services are installed. Cable need not be installed or activated until the new subdivision meets the criteria established for line extensions.

4. The licensee must extend and make cable television service available to any resident requesting connection within the licensee's authorized service area at the regular installation charge if the connection to the resident would require no more than a one hundred twenty-five foot drop line, and provided that paragraph 2 of this subsection is met.
5. With respect to requests for connection requiring a drop line in excess of one hundred twenty-five feet, the licensee must extend service to such residents at a one time charge not to exceed the actual costs incurred by the licensee for the distance exceeding one hundred twenty-five feet.

D. Construction and Technical Standards.

The following general requirements, which are not to be interpreted as imposing standards in excess of FCC imposed limits, apply to all licensees.

1. In those areas and portions of the service area where the transmission and distribution facilities of the telephone company and the electric company are underground or later placed underground, the licensee shall likewise install its transmission facilities underground.
2. In areas where facilities do not have to be underground, a licensee shall not erect any new poles along any street or public way of the town except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems and only then with the advance approval of the council.
3. All television signals transmitted on a cable system must include any closed captioning information for the hearing impaired. Antennas, supporting structures and outside plant used in the system must be designed to comply with the recommendations of the Electronics Industries Association and applicable federal and local regulations on tower structures and outside plant.
4. The licensee may perform at its expense any proof of performance tests designed to demonstrate compliance with the requirements of this chapter, the license agreement and the FCC. The town manager may require periodic proof of performance tests to be performed at the expense of the licensee. Upon request, the licensee must provide the test results promptly to the town manager.
5. The licensee may advise the town manager when a proof of performance test is scheduled so that the town manager may have an observer present.
6. A licensee may not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another licensee, or individual or master antennas used for receiving television or other broadcast signals.

E. Maintenance Specifications.

1. The licensee shall construct, install and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee's employees, the employees of the utility companies and all nearby property owners shall be a primary concern.
2. All cables are to be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled to the maximum extent possible.
3. As between licensee and the town, the licensee shall be solely and completely responsible for the actions taken by any contractor or other agent employed to construct or install the licensee's facilities on streets as well as on public or private property.
4. The licensee shall give prior written notice, as set forth later in this article, of its intent to place underground facilities. Failure to provide such notice may subject a licensee to liquidated damages pursuant to Article 17-9 of this chapter or other enforcement sanctions.
5. In addition, the licensee shall comply with all other town, state and federal laws and regulations which may be applicable to its operations.
6. A licensee shall have available at all hours personnel capable of responding to emergency conditions requiring immediate repair to any facility owned by the state, county, town or the gas, electric and telephone utilities, as well as pipeline companies or similar industries. The licensee shall respond to normal requests for location of its facilities within forty-eight hours. The licensee shall be a member of the One Call Notification Center, or comply with state underground law, for its service area.
7. In the event that licensee property, or the facilities and equipment of unauthorized cable communication providers, has been installed in a street or other dedicated public right-of-way without complying with the requirements of this chapter, or the license has been terminated, revoked or expired, or the use of any licensee property is discontinued for any reason for a continuous period of three months, licensee or any unauthorized cable communication provider, shall at its sole expense on the demand of the council remove promptly from the street all licensee or unauthorized cable communication provider property other than that which the council may permit to be abandoned in place. Upon such removal of subject property, licensee or unauthorized cable communication provider shall promptly restore the street or other public places from which the subject property was removed to a condition as near as possible to its prior condition. Subject property no longer in service may be left in place with the approval of and in a manner prescribed by the council. Upon abandonment of said property in place, licensee or unauthorized cable communication provider shall deliver to the council an instrument transferring ownership of the subject abandoned property to the town. Any cost arising from compliance with this provision shall be borne by the licensee or unauthorized cable communication provider.

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F. Use of Streets.

1. A licensee must utilize, with the owner's permission, existing poles, conduits or such other facilities whenever possible. Underground street, sidewalk and driveway crossings not using existing conduits shall be bored unless specific council approval is received. A licensee may install its own poles only when approved by the council and subject to whatever reasonable terms the council requires.
2. All transmission lines and other equipment must be installed and located to minimize interference with the rights and reasonable convenience of public and private property owners. The council reserves the right to issue such reasonable rules and regulations concerning the installation and maintenance of cable systems in the public rights-of-way, as may be consistent with this chapter, state and federal law.
3. The licensee shall have at all times up-to-date route maps showing trunk and distribution lines. Licensee shall make all such maps available for review by the appropriate town personnel.
4. Suitable safety devices and practices as required by town, state and federal laws, ordinances, regulations and permits must be used during construction and maintenance of a cable system.
5. A licensee must remove, replace or modify at its own expense, any of its facilities within any public right-of-way when required to do so by the town manager to allow the town to change, maintain, repair, improve or eliminate a public thoroughfare. Nothing in this article shall prevent licensee from seeking and obtaining reimbursement from sources other than the town.
6. A licensee must obtain any required permits before doing any excavation or causing disturbance to public thoroughfares or private property as a result of its construction or operations and must restore to their former condition such private property and public thoroughfares, the latter in a manner consistent with all applicable rules, regulations, resolutions or other town manager requirements relative to construction, repair or maintenance in public rights-of-way. If such restoration is not satisfactorily performed within a reasonable time in the opinion of the town manager, the town manager may, after prior notice to licensee, cause the repairs to be made at the expense of the licensee. The town manager may inspect ongoing construction and require a licensee to halt construction where the town manager finds the construction to be in non-compliance with the requirements of this chapter, the license agreement or a permit.
7. Prior to commencement of underground construction a licensee must have complied with the following requirements:
 - a. Have received a permit from the council for construction on public property or rights-of-way;

- b. Have requested and received clearance from utilities in the area of construction;
 - c. Where new construction will be on private property or in public rights-of-way adjoining private property, have provided no less than seven days written notice by mail or hand delivered to all such property occupants. The notice shall include the name, address and toll-free phone number that the affected person may call for more information or to lodge a complaint.
8. At the request of any person holding a valid building moving permit and upon sufficient notice, the licensee must temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than seventy-two hours advance notice. The direct expense of such temporary move must be paid by the permit holder, and the licensee may require payment in advance.

G. System Services and Capability.

1. The following minimum requirements for facilities and services apply to licenses. The council may require that a licensee exceed these minimum requirements. The town and all licensees realize that rapidly changing technological advances and related costs of same may allow for significant enhancements to the services offered during the term of any license agreement. License agreements may incorporate provisions for such enhancements as they become reasonably available to similar sized systems.
- a. Except as provided in the license agreement, a cable system must have a minimum capacity of fifty-four video channels available for immediate or potential use. Two-way capability may be designed into the system. Upon request, this minimum channel capacity may be modified by the council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable to comply with said requirement. A licensee shall have the burden of demonstrating, by clear and convincing evidence, that compliance with the minimum channel capacity would be commercially impracticable for its Queen Creek cable system.
 - b. Standard installation and basic service to public buildings may be required without charge as set forth in the license agreement. Licensee may be required to make available, one service outlet to a conveniently accessible point in each municipal building and any other public building designated by the town manager. The installation charge to each occupant, if any, would not exceed licensee's direct cost (time and material). There may also be a minimum monthly service charge at the above locations.
 - c. A licensee may design its system to allow the council to interrupt audio portions of the cable service in an emergency to deliver information to subscribers.

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- d. A licensee must provide standby power for the head end so as to be able to operate some channels during a power outage for a minimum of six hours or as provided for in the license agreement.
2. The council may waive minimum requirements for licenses where the applicant demonstrates that such waiver is in the public interest.
3. The following requirements apply to access and community programming channels:
 - a. Applications for a license shall include proposals for the provision of educational and governmental access channel sufficient to meet community needs during the term of the license as determined by the council. A licensee or applicant shall specify what grants, if any, it is willing to make for studio equipment and facilities to be used for local program production by all cable access users. Applicants are encouraged to include proposals for local origination programming by the licensee.
 - b. All access channel operations must conform to the following minimum requirements:
 - i. Access channels shall be carried on the licensee's lowest priced service offering.
 - ii. The license may require a licensee or other entity to manage the access channels and to establish reasonable rules for the use of access channels consistent with the requirements of this chapter and the intended purpose of such channels.
 - iii. The use of any educational access channel shall be made available free of charge to schools and other qualified educational institutions for the transmission of local educational programming.
 - iv. The use of any local government access channels shall be made available free of charge to the council for the transmission of government related programming.
 - v. The licensee shall submit to the council on an annual basis a plan for publicizing access programs and access use.
 - c. At the request of a licensee the council may promulgate rules under which channel capacity dedicated to access use may be used by the licensee when it is not being used for access purposes.
 - d. A license shall include a provision for the licensee to provide channel capacity for community programming on terms and conditions specified in the license agreement.

H. Interconnection.

1. A licensee shall interconnect its cable system with other or all other systems located in the town, in nearby cities, or in the county upon the request of the council, where economically and technically feasible.
2. Upon receiving the request of the council to interconnect, a licensee shall initiate negotiations with the other affected systems in order that technical details be resolved and costs may be shared on an equitable basis.

I. Local Broadcast Channels.

Each cable system shall carry as part of the basic service local channels broadcast in its area as required and defined in current FCC regulations. In this regard, those parts of 47 C.F.R. Part 76 relating to carriage of local channel signals as existing, or as may be amended, shall apply and are incorporated herein by reference.

J. Technology Review.

1. The town and licensee shall meet at periods not exceeding three years or upon request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community and other factors impacting cable television. As a result of these discussions, this license may be modified by the town and the licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community or other factors impacting cable television.
2. If any of the following conditions occur, and upon written request of either licensee or town, the town manager and licensee agree to meet and discuss in good faith the terms of a mutually agreeable license amendment:
 - a. Cable service similar to cable television service offered by licensee is provided by any entity using the streets and public ways, which is not subject to similar licensing requirements of the town.
 - b. The Cable Act is amended to allow licensee to provide intrastate or interstate telecommunication and any regional Bell operating company to provide cable service.
 - c. Any other significant event occurs, including but not limited to a final non-appealable order or judgement by a court of competent jurisdiction, which either licensee or town believes may impact the current terms and conditions of the license.

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The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the council for proposed council action within ninety days of such written request, on how to amend the license to relieve town or the licensee from any commercial impracticability, which arises from the condition in question. This provision shall not require that the license be amended, however it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.

ARTICLE 17-9 FEES, BONDS, LETTERS OF CREDIT, LIQUIDATED DAMAGES AND APPEALS

- A. Application Fee. Each application for a license to be granted under the authority of this chapter shall be accompanied by a non-refundable filing fee in the amount specified below, by certified or cashier's check made payable to the town. Non-refundable filing fees in the following amounts are required:
1. For an initial license or renewal: \$2,500.
 2. For consent to transfer or change ownership: \$2,000.
 3. For license modifications:
 - a. pursuant to 47 U.S.C. Section 545: \$2,500.
 - b. any other modification: up to \$2,000.
- B. License Fee.
1. In consideration of the fact the streets of the town will be used by a licensee in the operation of its cable system within the boundaries of the town and said streets are valuable properties acquired and maintained by the town at great expense to its taxpayers, and in consideration of the costs incurred by the town in regulating and administering each cable license, the licensee shall pay to the town no less than five percent of the licensee's gross annual revenue, from all sources attributable to the operations of the licensee within the licensed area. Adjustments for one-time fees paid may be considered.
 2. This payment shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be due and payable no later than thirty days after the relevant computation date. Each payment shall be accompanied by a financial report showing in detail the gross revenues of the licensee related to that quarter.
 3. Except as provided in paragraph 8 of this subsection, the payment required pursuant to this article shall be in addition to any other tax or payment owed to the town pursuant to any other applicable ordinance or chapter of the town code, regulation or law of the county, state or federal government.

4. A license fee not received in full by the town within thirty days of its due date shall be deemed delinquent and subject to a late fee. The late fee for delinquent payment shall be five percent of the amount overdue plus interest at the rate of one and one-half percent per month, or parts thereof.
5. Where the licensee fee is based on gross revenues, the licensee shall file, with each license payment, a statement of the gross revenues for the period on which the fees are based. Such a licensee must file within three months of the end of its fiscal year a statement of gross revenues for the preceding year, which is either audited or certified as accurate by an officer of the licensee. Any payment of license fees to adjust for a shortfall in the quarterly payments for the preceding year must be made not later than the filing date for the audited annual statement of gross revenues. Adjustments for any overpayment will be credited to subsequent quarterly payments. Interest and late charges (as specified above) will not be imposed for any payment necessary as a result of the yearly adjustment if the payment to correct the shortfall does not exceed ten percent of the total payments made during the preceding year. In the event such payment exceeds ten percent, the licensee is liable for interest and late charges for the entire amount due.
6. The town manager shall have the right, upon reasonable notice, to inspect or audit during normal business hours a licensee's records showing the gross revenues and other relevant underlying data and information. Upon examination of such information, the town manager has the right to recompute any and all amounts paid under a license. Any additional amounts, due the town as a result of an audit and appeal process specified in the license agreement, shall be paid by the licensee within thirty days following written notice to the licensee by the council, which shall include a copy of the inspection or audit report. In the event that an inspection or audit results in additional monies owed the town in excess of five percent of the total paid, the licensee shall bear the total cost of the audit, and late charges and interest on the additional amount due.
7. No acceptance by the council of any payment shall be construed as an accord that the amount paid is in fact the correct amount nor shall such acceptance of payment be construed as a release of any claim the council may have.
8. There shall be allowed as an offset against the license fee due under this article any amounts licensee paid to the town during the prior quarter in privilege license (sales) taxes; provided, however, that there shall be no offset to the extent that licensee made payments of privilege license (sales) taxes on any gross income (within the meaning of the privilege license [sales] tax ordinance) which is not included in gross revenues under this chapter. The license shall provide for suitable procedures and methods for audit of this offset.

C. Performance Bond.

1. Within thirty days after the execution of the license agreement and prior to any construction work in the public right-of-way, the licensee shall file with the town manager a performance bond, or a letter of credit in a form acceptable to the town attorney, in the town's favor in the amount of fifty thousand dollars, or as specified

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in the license agreement. In the event that licensee fails to comply with any provision of this chapter or the license agreement, then there shall be recoverable jointly and severally from the principal and surety any and all damages or costs suffered by the town. These damages or costs shall include but not be limited to attorney's fees, cost of any action or proceeding and including the full amount of any compensation indemnification, cost of removal or abandonment of any property or other costs due and owing the town up to the full amount of such bond.

2. At such time as ninety-five percent of planned construction in the town is complete, as specified in license agreement, the council may, at licensee's request, reduce or eliminate the performance bond requirement.
3. The bond shall be issued by a surety company authorized to do business in the State of Arizona and shall be in a form approved by the town attorney, and contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty days after receipt by the council, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

4. The rights reserved by the council with respect to the bonds required are in addition to all other rights and remedies the council may have under this chapter, the license agreement or any other law.

D. Irrevocable Letter of Credit.

1. Within thirty days after written notification of the award of license by the council, the selected applicant shall provide the town manager a letter of credit from a financial institution licensed to do business in Arizona in the amount of ten thousand dollars, or as specified in the license agreement, as security for the faithful performance by licensee of all provisions of this chapter and compliance with all orders, permits and directions of any department of the town.
2. The form and content of such letter shall be approved by the town attorney and contain the following endorsement:

"This letter of credit may not be canceled or allowed to lapse until thirty days after receipt by the town manager, by certified mail, return receipt request, of a written notice from the issuer of the letter of credit of its intent to cancel or not to renew."

In the event the letter of credit is insufficient to pay the town for any compensation, damages, penalties, costs or expenses owed it pursuant to this chapter or the license agreement, the licensee's performance bond may be drawn upon by the town manager for any amount due the town over and above the amount of the letter of credit.

3. Within fifteen days after written notice to licensee by the town manager that the town manager has withdrawn any amount from the letter of credit, licensee shall deposit or pay to the town manager a sum of money sufficient to restore such letter of credit to the original amount of ten thousand dollars, or as specified in the agreement.
4. If a licensee fails to pay the town: any compensation within the time fixed by this chapter or the license agreement; any taxes due; or any damages, costs or expenses which the town incurs by reason of any act or default of the licensee; or if the licensee fails to comply with any provision of the license agreement which failure the town manager determines can be remedied or partially cured by demand on the letter of credit, the town manager may, following ten days notice to the licensee, withdraw from the letter of credit the amount so claimed by the town manager if within such period the licensee has not remedied the matter. The town manager shall immediately notify licensee of any such withdrawal, the date and amount.
5. The rights reserved to the town manager with respect to the letter of credit are in addition to all other rights it may have under this chapter, the license agreement and any other law.
6. Failure to maintain the letter of credit as required shall constitute a violation of the provisions of this chapter.

E. Liquidated Damages.

All license agreements shall contain provisions for liquidated damages, in amounts as mutually agreed upon between the town manager and the licensee, for the licensee's failure to comply with various requirements of this chapter and the license agreement as specified below. All references to notices throughout this subsection shall be by certified or registered mail, return receipt requested.

1. For failure to substantially complete construction or line extensions as required, unless the council specifically approves a delay caused by the occurrence of conditions beyond the licensee's control, the licensee shall pay one hundred dollars per day for each day, or part thereof, the deficiency continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
2. For material failure to provide data, documents, reports and information in a timely manner as required, the licensee shall pay fifty dollars per day, or part thereof, that each violation occurs or continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
3. For material failure to test, analyze and report on the performance of the system following a request from the town manager to do so, the licensee shall pay twenty-five dollars per day for each day, or part thereof, that such noncompliance

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continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.

4. Failure to substantially comply with the material provisions of Article 17-8 of this chapter, the licensee shall pay one hundred dollars per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
5. For substantial failure to remedy any other violation of the chapter or the license agreement within seven days of receipt of notice of each violation, the licensee shall pay one hundred dollars per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
6. For failure to substantially comply with reasonable orders of the town manager, the licensee shall pay fifty dollars per day for each day, or part thereof, that noncompliance continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
7. Liquidated damages will not be imposed by the town manager if the town manager finds that the failure of the licensee resulted from conditions beyond the licensee's control. Liquidated damages may be reduced or eliminated by the town manager if the town manager finds that the failure of the licensee resulted from excusable neglect. The licensee shall bear the burden of proof in establishing the existence of such conditions.
8. Prior to assessing any of the liquidated damages set forth in this article, the town manager shall give licensee seven days written notice of its intention to assess such damages. In said notice, the town manager shall set forth, at a minimum, the following:
 - a. amount to be assessed;
 - b. factual basis for such assessment; and
 - c. specific license provision alleged to have been violated.

Following receipt of notice set forth in this article, licensee shall have a seven day period during which time licensee and the town manager shall make reasonable efforts to resolve the dispute in question. Collection of liquidated damages by the town for any breach shall constitute the town's exclusive remedy for the period for which liquidated damages were collected.

9. The imposition and collection of liquidated damages as set forth above shall not prevent the town manager from pursuing other remedies for other violations of either the article or the license agreement for which liquidated damages have not been imposed and collected.

F. Appeals.

1. In the event that licensee contests the town manager's assessment of liquidated damages, or fails to respond to the above mentioned notices, within fourteen days the town manager shall convene an administrative hearing as specified in subparagraph a of this paragraph. Licensee may pay the fine, proceed with this hearing, or waive its rights to this administrative hearing and proceed directly to the public hearing before the council, as specified in subparagraph b of this paragraph.

a. This shall be an administrative hearing, and licensee shall be afforded procedural due process, including an opportunity to be heard and to present evidence. Within fourteen days after the conclusion of such administrative hearing, the town manager shall issue a determination. In that determination the town manager may:

- i. find that licensee is not in violation of this chapter or the license agreement;
- ii. find that licensee is in violation of this chapter or the license agreement, but that violation was with just cause and waive any penalty that might otherwise be imposed;
- iii. find that licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit or performance bond provided for elsewhere in this chapter;
- iv. find that licensee is in material violation of this chapter and the license agreement and recommend the council declare the licensee in violation and terminate the license agreement, provided the council may take such action only after a public hearing as set forth in subparagraph b of this subsection.

b. If a public hearing before the council is requested by licensee or is held pursuant to item 4 of subparagraph a of this paragraph, it shall be de novo and it shall convene within thirty days of the request thereof. Licensee shall be afforded full due procedural process, including without limitation, an opportunity to be heard and to present evidence. The council's decision, which shall include findings of fact and conclusions, shall be made not later than thirty days after the conclusion of the hearing. In that decision, the council may:

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- i. find that licensee is not in violation of this chapter or the license agreement;
- ii. find that licensee is in violation of this chapter or the license agreement, but that violation was with just cause and waive any penalty that might otherwise be imposed;
- iii. find that licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit and/or performance bond provided for elsewhere in this chapter;
- iv. find that licensee is in material violation of this chapter and the license agreement and declare the licensee in violation and revoke the license agreement pursuant to Article 17-10.

ARTICLE 17-10 TERMINATION - REVOCATION

A. Termination.

The license shall terminate, upon the expiration of the term thereof, unless renewal is successfully applied for, per Article 17-11.

B. Revocation.

1. If a licensee is in material violation of this chapter or in default of the terms of its license agreement, the town manager may make written demand that the licensee come into compliance with said requirements within a reasonable period of time, as specified in Article 17-9. If the licensee is unwilling or unable to do so, the town manager may recommend the revocation, alteration or suspension of the license to the council, specifying the reasons for such action.
2. A copy of any such recommendations shall be served by certified or registered mail, return receipt requested upon the licensee, and the licensee shall be given at least fourteen days notice prior to the date of a public hearing before the council to consider such action, and the licensee will be given an opportunity to present evidence and make arguments at such meeting.
3. The council shall consider the recommendations, the response of the licensee, and hear from any other interested persons, and shall determine whether or not the licensee is in violation or default of its obligations and, if so, whether such failure was with just cause.
4. If the council finds that the failure by the licensee was with just cause, the council shall direct the licensee to comply within such time and manner and upon such terms and conditions as are reasonable.

5. If the council determines that the licensee's failure was without just cause, the council may declare the license revoked, altered or suspended. The council may provide a specified period of time for the licensee to come into compliance before the revocation takes effect.
6. A license may be revoked, altered or suspended by the council on the following grounds, among others, and taking into account any ameliorating circumstances:
 - a. Fails to comply with any material provision of this chapter or the license agreement.
 - b. Makes willful false or misleading statements in any application.
 - c. Engages in the practice of any fraud or deceit upon the town or subscribers.
 - d. Fails to abide by the privacy provision of this chapter.
 - e. Fails to make timely payment of any monies due the town pursuant to this chapter.
 - f. Unless otherwise provided in the license agreement, fails to commence construction in the license area within three months and to commence basic service within six months from the effective date of the license agreement.
 - g. Fails to file and maintain the bonds, insurance, records, failure to pay license fees or assessed property taxes.
 - h. For repeated material failure to maintain service quality under the standards prescribed.
 - i. Fails to restore service after forty-eight consecutive hours after notice to the licensee or interrupted service to the entire system, except when such interruption is beyond the control of the licensee.

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C. System Disposal.

In the event of termination or revocation of a license, the licensee involved shall offer to sell the cable system, at the fair market value, to a new licensee or applicant for a license. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow and other factors will be considered. Under no circumstances shall any valuation be made for any right or privilege granted by license. Should the licensee fail to negotiate a sale, as described above, the town may purchase the system at the fair market value for the purpose of leasing to a qualified operator until a buyer can be found, pursuant to the provisions of A.R.S. §9-509.

D. Continuity of Service.

Licensee shall provide continuous service for the entire term of the license agreement to all subscribers and users in return for payment of the established rates, fees and charges. If licensee seeks to sell or transfer, or if the town revokes or fails to renew the license, licensee shall continue to operate the system as trustee for its successor in interest until an orderly and lawful change of operation is effected. This period of operation shall not exceed one hundred twenty days from the occurrence of any of the above events. Revenues accrued during that period of time shall be received by the operator. During such time, the cable system shall be operated under terms and conditions consistent with the most recent license agreement and this chapter.

ARTICLE 17-11 RENEWAL

- A. If a licensee decides to initiate a formal license renewal process in accordance with 47 U.S.C. Section 546, it must notify the council within thirty to thirty-six months prior to the license expiration date.
- B. In considering a renewal application, the council must consider whether:
1. The licensee has substantially complied with the material terms of the existing license and applicable law;
 2. The quality of licensee's service, including signal quality, customer service complaint resolutions, billing practices (without regard to mix, quality or level of cable services) has been reasonable in light of community needs;
 3. The licensee has the financial, legal and technical ability to provide services, facilities and equipment set forth in its renewal proposal; and
 4. The licensee renewal proposal is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.
- C. If the council's assessment is that the license should not be renewed, the council may commence an administrative hearing in accordance with 47 U.S.C. Section 546.

- D. The provisions of 47 U.S.C. Section (a) - (g) notwithstanding, a licensee may submit an application for renewal in accordance with Section (h), which affords a cable operator the opportunity to submit a proposal for the renewal of a license at any time. The council may, after adequate public notice and comment, grant or deny such proposal.
- E. The renewal of a license does not become effective until any renewal fees have been paid by the licensee.

ARTICLE 17-12 TRANSFERS AND CHANGE OF CONTROL

- A. Licensee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release of more than forty-nine percent of the cumulative ownership of the system without prior written authorization from the council. For the purposes of this article, a merger or consolidation shall be deemed a transfer or assignment. The town manager shall be promptly notified in writing, within sixty days of the effective date of any such sale, transfer, assignment, exchange or release which constitutes more than five percent of the cumulative ownership of the system. Nothing in this article shall be deemed to prohibit a pledge or hypothecation or mortgage or similar instrument transferring conditional ownership of the systems assets to a lender or creditor in the ordinary course of business, unless such interest shall exceed seventy-five percent of the original cost or the fair market value, whichever is higher.
- B. No licensee shall sell, transfer, assign, exchange or release, or permit the sale transfer, assignment, exchange or release of more than ten percent of the cumulative ownership of the system, during the thirty-six month period commencing on final award to a licensee by the council, without expressed written consent of the council.

ARTICLE 17-13 INDEMNITY INSURANCE

- A. The licensee shall at its sole cost and expense, indemnify, hold harmless and defend the town, its officials, boards, commissions, agents and employees by providing immediate defense with counsel approved by the council, against any and all claims, suits, causes of action, proceedings and judgments for damages arising out of construction, maintenance or operation of the cable communication system.
- B. The licensee, within thirty days after written notice of the granting of a license, shall provide the town with and maintain in full force throughout the term of the license agreement, insurance issued by a company duly authorized to do business in the State of Arizona, insuring with respect to the installation, construction, operation and maintenance of the system as follows:
 - 1. Comprehensive general and automobile liability coverage including, but not limited to, blanket contractual liability, completed operations liability, broad form property damage including but not limited to coverage for explosion, collapse, underground hazard and automobile non-ownership liability. This insurance shall be written in the following minimum amounts.

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- a. Comprehensive general liability: \$1,000,000 combined single limit, bodily injury and property damage
 - b. Comprehensive automobile liability: \$1,000,000 combined single limit, bodily injury and property damage
 - c. Excess liability, covering all the above mentioned hazards, in the minimum amount of \$4,000,000.
2. Workers' compensation coverage as required by the laws and regulations of the State of Arizona.
 3. All insurance policies required herein shall include the town as a named insured party.
 4. Licensee shall be solely responsible for all premiums due and payable for insurance required herein. Licensee shall provide to the town a certified copy of the policies listed above.
 5. All insurance policies required herein shall be in a form approved by the town attorney and shall include a sixty day notice of cancellation or modifying endorsement.
- C. The provisions of subsection B of this article, in the discretion of the town, may be satisfied by proof of self-insurance.

ARTICLE 17-14 ADMINISTRATION

- A. Inspection of Records. The council reserves the right during the term of the license agreement and during normal business hours and upon the giving of reasonable notice to examine, audit, review and obtain copies of licensee's contracts, engineering plans, accounting, financial data and service records relating to the property and operations of the licensee and to all other records required to be kept pursuant to this chapter. The review and copying of information should be subject to confidentiality protections and FCC privacy rules.
- B. Licensee Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the licensee for the conduct of its business shall be provided to the town manager, upon request of the town manager.
- C. Town Manager. The town manager or his designee shall have responsibility for the day-to-day administration of cable communication operations within the town as governed by this chapter and the applicable license agreements. The town manager shall be empowered to take all administrative actions on behalf of the council except those actions specified herein which are reserved to the council or another town office or officer.

ARTICLE 17-15 GENERAL PROVISIONS

- A. Non-Discrimination. Licensee shall not deny service, access or otherwise discriminate against subscribers, users or residents of the town. Licensee shall comply at all times with all applicable federal, state and town laws, rules and regulations, executive and administrative orders relating to non-discrimination and equal employment opportunities and requirements.
- B. Laws and Codes. Licensee shall comply fully with all applicable local, county, state and federal laws, codes, ordinances, rules and regulations.
- C. Cumulative Rights and Remedies. Except as specified herein, all rights and remedies of the town manager and the council in this chapter are cumulative and may be exercised singly or cumulatively at the discretion of the town manager or the council.

ARTICLE 17-16 RIGHTS RESERVED TO THE COUNCIL

Without limitation upon the rights which the council may otherwise have and subject to paragraph 9, subsection B of Article 17-7, the council does hereby expressly reserve the right to amend any article or provision of this chapter for any reason determined to be desirable by the council including, but not limited to:

- A. New developments in the state of technology of cable communications systems.
- B. Any changes in federal or state laws, rules or regulations.

EXHIBIT B

FCC CUSTOMER SERVICE STANDARDS (Excerpts from 47 CFR)

Subpart H-General Operating Requirements

§ 76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, preexisting customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability

(i) the cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure

compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers

(i) Refunds-Refund checks will be issued promptly, but no later than either

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits-Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions

(i) *Normal business hours*-The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) *Normal operating conditions*-The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are *not* within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which *are* ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) *Service interruption*-The term "service interruption" means the loss of picture or sound on one or more cable channels.

NOTE TO § 76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

[58 FR 21109, Apr. 19, 1993, as amended at 61 FR 18977, Apr. 30, 1996; 65 FR 53615, Sept. 5, 2000; 67 FR 1650, Jan. 14, 2002]
§ 76.1602

Customer service-general information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
- (7) Effective May 1, 2011, any assessed fees for rental of navigation devices and single and

additional CableCARDS; and,

(8) Effective May 1, 2011, if such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to:

(i) The rental of single and additional CableCARDS; and

(ii) The rental of operator-supplied navigation devices.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

[65 FR 53617, Sept. 5, 2000, as amended at 76 FR 40279, July 8, 2011]

§ 76.1603 Customer service-rate and service changes.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by § 76.1602.

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

NOTE 1 TO § 76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

NOTE 2 TO § 76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

NOTE 3 TO § 76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

[65 FR 53617, Sept. 5, 2000, as amended at 66 FR 16554, Mar. 26, 2001]

§ 76.1619 Information on subscriber bills.

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.