

[COUNTERPARTY LEGAL NAME]

And

CITY OF HENDERSON, NEVADA

TELECOMMUNICATIONS USE AGREEMENT

CMTS #<<insert>>

TELECOMMUNICATIONS USE AGREEMENT

THIS TELECOMMUNICATIONS USE AGREEMENT (“Agreement”) is entered into by and between the City of Henderson, a municipal corporation and political subdivision of the State of Nevada (the “City”) and <Insert Company's Name>, a <Insert state of organization/incorporation> <Insert type of legal entity> (“Company” or “Licensee”) and is effective as of the date of City action, as reflected on the signature page below (the “Effective Date”).

Recitals

- A. City is the owner of Municipal Facilities located in City Rights-of-Way; and
- B. Company is registered with the PUCN as a provider of Telecommunications Services, holding a certificate of public convenience and necessity (CPC <Insert Number>); and
- C. Company has requested permission to construct, maintain, manage and operate facilities in the ROW, on a Licensee Pole, on or in Municipal Facilities, and on or in Third-Party Structures to enable Company to provide Telecommunications Services and enable its customers that are Qualified Service Providers to provide Commercial Mobile Service and/or Commercial Mobile Radio Service to retail customers, some of whom have a physical, billing address within City corporate limits; and
- D. Company is willing to compensate City in exchange for a grant and right to use and physically occupy portions of the Municipal Facilities, Third-Party Structures, and the ROW and the privilege of doing business pursuant to this non-exclusive franchise.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

- 1. Definitions.** For all defined terms (whether defined in this Section 1 or elsewhere in this Agreement, the HMC or the Standards Manual), when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein or in the HMC and Standards Manual shall be given their common and ordinary meaning.
- 2. Term.** This Agreement shall be effective as of the Effective Date and shall extend for a period of ten (10) years, unless it is earlier terminated by either party in accordance with the provisions herein (“Initial Term”). The parties may upon mutual written agreement extend this Agreement for one additional period of five (5) years on the same terms and conditions as set forth herein (“Renewal Term”), provided that Company is not in default of any of its obligations under this Agreement at the time of renewal. The Initial Term and Renewal Term are collectively referred to herein as the “Term.”
- 3. Representation Concerning Services; Termination For Cause; Termination for Convenience by Company; Termination of Licensed Location Authorization.** Company represents and covenants that it is and will at all times during the Term remain a provider of Telecommunications Service as defined pursuant Title 47 of the United States Code. Company acknowledges that the foregoing representation and covenant is a material inducement for City to enter into this Agreement. At any time that Company ceases to operate in the State of Nevada as a provider of Telecommunications Service under federal law, City shall

have the option, in its sole discretion and upon six (6) months' prior written notice to Company, to terminate this Agreement without any liability to Company related directly or indirectly to such termination and to require Company to remove Company's Wireline Communications Facilities and Licensee Poles and restore the ROW and Municipal Facilities in accordance with all requirements in this Agreement, including those relating to relocation and removal of Communications Facilities. Company shall have the option, in its sole discretion and upon six (6) months' written notice to City, to terminate this Agreement, provided Company is not in default of any of its obligations under this Agreement. Company may terminate a License Authorization by providing City thirty (30) days prior written notice and, before the termination of such License Authorization is effective, by removing all Communications Facilities and any Licensee Pole, and by restoring the ROW and Municipal Facility in accordance with all requirements in this Agreement, including those relating to relocation and removal of Facilities. Upon termination of this Agreement or upon the Company terminating a License Authorization, in lieu of requiring Company to remove some or all of the Company-owned conduit, City may require Company to (a) transfer ownership of, all rights to, and title to some or all of that conduit to City in consideration of City not requiring Company to remove the particular conduit; and (b) deliver a signed bill of sale in a form acceptable to City that conveys all rights, title, and interest to City in that conduit and certifies that the conduit is free of all liens and other encumbrances.

4. Scope of Agreement. Any and all rights expressly granted to Company under this Agreement, which shall be exercised at Company's sole cost and expense, shall be subject to the prior and continuing right of City under applicable Laws to use any and all parts of the ROW exclusively or concurrently with any other person or entity, and shall be further subject to all Encumbrances which may affect the ROW. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Company a real property interest in land, including any fee, leasehold interest, or easement. Nor does this Agreement grant Company the right to provide any "video service" (as such term is defined in NRS 711.141) without a valid State-of-Nevada-issued certificate or other required authorization for such service.

5. ROW Authorization. Subject to Company complying with all of the terms and conditions of this Agreement and with all applicable Laws, and subject to Company first obtaining all required easements, permits and approvals, and Company complying with the HMC, including Titles 11 and 19, and other applicable provisions of this Agreement and the Standards Manual, City hereby authorizes and permits Company to enter upon the ROW and only at or in the Licensed Location within the ROW (or in a Licensed Location on a Municipal Facility that is outside, adjacent to, and used for the ROW) install, operate, maintain, control, manage, and remove authorized Wireline Communications Facilities and Licensee Poles in accordance with the applicable License Authorization to provide Telecommunications Services.

6. No Interference. Company, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities, cable television, location monitoring services, public safety and other equipment and utility or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by, and in accordance with, applicable Law, this Agreement and the Standards Manual.

7. Permits; Default. Whenever Company is in default in any of its obligations under this Agreement, the Standards Manual or a License Authorization, after notice and lapse of any applicable cure period, City may deny further encroachment, excavation or similar permits until such time as Company cures all of its defaults.

8. Compliance with Requirements. Company shall comply with all applicable Requirements, including the HMC, this Agreement, the Standards Manual and each applicable License Authorization, in the exercise and performance of its rights and obligations under this Agreement.

9. No Authorization to Provide Other Services; Cost of Construction. Company represents, warrants and covenants that (a) the Wireline Communications Facilities and any Licensee Poles installed pursuant to this Agreement will be utilized solely by Company in connection with the provision of Telecommunications Service or any Information Service that may be provided under applicable Law, and (b) Company is not authorized to and shall not use the Communications Facilities or any Licensee Poles to offer or provide any other services not specified and authorized herein. Company represents that it has a legal right to perform (and cause its contractors or agents to perform) all construction, maintenance, and other activities relating to the construction, installation, repair, maintenance, operation, service, replacement, or removal of Communications Facilities owned by Company or a QSP and that such activities must be performed by Company entirely at Company's expense. and that Company is responsible for and will hold City harmless from another Person's performance or attempted performance of such activities.

10. Ownership. Company represents that it has a legal right to perform (and cause its contractors or agents to perform) all construction, maintenance, and other activities relating to the construction, installation, repair, maintenance, operation, service, replacement, or removal of Communications Facilities owned by Company and that such activities must be performed by Company entirely at Company's expense. All Communications Facilities shall be owned by Company. This Agreement authorizes Company, and no other person, to mount, operate, manage and maintain Communications Facilities in the ROW unless otherwise expressly permitted herein. This Agreement does not authorize a Qualified Service Provider to enter or access the ROW or to mount, operate, manage or maintain any Wireless or Wireline Communications Facilities (a) on or in Municipal Facilities, (b) on or in Third-Party Structures, (c) City-owned buildings, (d) suspension cable between Licensee Poles or Third-Party Structures, or (e) on Licensee Poles.

11. Nonexclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Company under this Agreement shall be non-exclusive, and shall be subject and subordinate to (a) the continuing right of City to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other person or persons, and (b) the Encumbrances which may affect the ROW or Municipal Facilities now or at any time during the Term, including, without limitation, any Encumbrances granted, created or allowed by City at any time. The City reserves the right to vacate, alter or close any ROW.

12. Change of Law. All applicable provisions of the HMC and the Standards Manual, each as amended from time to time, and all provisions of this Agreement shall be binding upon Company, its successors, and permitted assignees. This Agreement shall be automatically amended to conform to any amendment to the HMC or the Standards Manual to the maximum extent permitted by applicable Law. If there is a conflict between a provision in the HMC or the Standards Manual, each as amended from time to time, and a provision in this Agreement, the HMC or Standards Manual provision shall control; provided that, to the extent the amended HMC or Standards Manual provision materially changes the obligations or liabilities of the Company pursuant to this Agreement, Company may terminate this Agreement by providing City with thirty (30) days' written notice. Company's provision of such notice of termination constitutes Company's agreement that it will satisfy any outstanding Agreement obligations owed to City under this Agreement, including the payment of any outstanding amounts due to the City and the removal of its Communications Facilities and Licensee Poles in accordance with this Agreement. If any Laws (other than the HMC or the Standards Manual) and any binding, non-appealable judicial interpretations thereof that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree that either party may terminate this Agreement or the parties may promptly amend this Agreement as reasonably required and mutually agreed to accommodate and/or ensure compliance with any such legal or regulatory change.

13. License Authorizations. Company shall install its Communications Facilities and Licensee Poles only in the locations and in the manner identified in the applicable License Authorization.

14. Compensation. Company agrees that it will pay to City or to such payee at such address as City may from time to time designate by written notice to Company, without deduction, set off, prior notice or demand, all lawful fees and compensation in connection with Company's performance under this Agreement, the compensation set forth below in the manner prescribed by City pursuant to the HMC.

14.1 Business License. The business license fee, if any, shall be due and payable in accordance with applicable provisions of HMC Title 4.

14.2 Wireline Fee. Company shall pay to City a fee for each Telecommunications Facility contained in a License Authorization in the amounts published by City, and as adjusted from time to time, and manner determined by the City in accordance with the HMC (the "Wireline Fee"). At City's sole discretion, City and Company may mutually agree in writing upon the provision of Company facilities or services to City in lieu of payment of all or a portion of the Wireline Fee.

14.3 Delinquent Payment. If Company fails to timely pay any business license fees or other amounts due and payable to the City, Company will pay interest and penalties on such delinquent fees as specified by the applicable provisions of the HMC.

14.4 Taxes and Assessments. Company is solely responsible for the payment of any applicable local/special improvement district assessments, property taxes, ad valorem taxes, or other applicable taxes, fees, and charges, including any exactions, fees, or charges that are applicable Company's real property development or use as required by City ordinance, the HMC, the NRS, or other applicable Law.

15. Installation and Construction. All construction shall be performed by a State of Nevada licensed contractor. Company shall comply with all applicable federal, State, and City technical specifications and requirements, including the Standards Manual, and all applicable Laws related to the construction, installation, operation, maintenance, management, and control of Company's Communications Facilities installed in the ROW. Company shall not install, maintain, or operate any Licensee Pole or Communications Facilities in the ROW, or install, maintain, or operate any Communications Facilities in or on a Municipal Facility or a Third Party Structure in the ROW, without first receiving a License Authorization and in accordance with all Requirements. Company is solely responsible for ensuring compliance with applicable Laws, including the Americans with Disabilities Act, and for maintaining sight visibility zones (SVZs) as identified in HMC Title 19. Company shall cause all construction work to be performed in such a manner as to ensure a minimum of delay or inconvenience to City and the public and shall prosecute such work diligently until completion.

16. Damages Caused by Company. Company acknowledges and agrees to comply, at its sole cost and expense and to the satisfaction of City, with any terms and conditions set forth in the Standards Manual for the repair of any damage to Company's Communications Facilities and Licensee Poles, or any damage to the ROW, Municipal Facilities or property, whether public or private, caused by Company, its agents, employees or contractors in their actions relating to installation, operation, repair, removal, or maintenance of Communications Facilities or Licensee Poles, including any vegetation then- or thereafter-located within or near a Licensed Location. The terms of this Section shall survive the expiration, completion or earlier termination of this Agreement.

17. Relocation and Removal of Facilities and Licensee Poles. Company acknowledges and agrees to comply, at its sole cost and expense and to the satisfaction of City, with any terms and conditions set forth in the Standards Manual for the relocation and/or removal of Company's Communications Facilities and Licensee Poles, including any applicable Relocation and Removal Charges. The terms of this Section shall survive the expiration, completion or earlier termination of this Agreement.

18. Risk of Loss. Company acknowledges and agrees that Company bears all risk of loss or damage or relocation or replacement of its Communications Facilities and Licensee Poles installed in the ROW pursuant to this Agreement from any cause, and City shall not be liable for any cost of repair or replacement of damaged or destroyed Communications Facilities or Licensee Pole, including, without limitation, damage caused by City's removal of the Communications Facilities or Licensee Pole, except to the extent that such loss or damage was solely and proximately caused by the intentional conduct or negligent acts or omissions of City, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in Subsection 19.3.

19. Indemnification and Waiver.

19.1 Indemnification. Company agrees to indemnify, defend, protect, and hold harmless City, its council members, officers, employees, and agents ("City Indemnitees") from and against any and all claims, demands, losses, including Municipal Facility warranty invalidation, damages, liabilities, fines, charges, just compensation, penalties, arbitration proceedings, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") for personal injury (including death), damage to real property, damage to tangible property, or Losses claimed by a third-party, including by a Qualified Service Provider or Company customer, directly or proximately resulting from activities undertaken by or on behalf of Company pursuant to this Agreement, except to the extent caused by the intentional conduct or negligent acts or omissions of a City Indemnitee or City contractor. Company further agrees to indemnify, defend, protect, and hold harmless City and City Indemnitees from and against any and all Losses in connection with: (a) Company's use of real property not owned by City in fee for Communications Facilities or a Licensee Pole; or (b) Company's use of a Municipal Facility or use of ROW that is not allowed by, is inconsistent with, is a violation of, or overburdens City's easement for, prescriptive right for, or other right to use such real property.

19.2 Waiver of Claims. Company hereby waives any and all claims, demands, causes of action, and rights it may have against City, during or subsequent to the Term, on account of any Losses, damage, or injury to any Communications Facilities or Licensee Pole or any loss or degradation of the Telecommunications Services, Information Services, Commercial Mobile Service, Commercial Mobile Radio Service, or service to a Company customer or Qualified Service Provider as a result of any event or occurrence which is beyond the reasonable control of City.

19.3 Limitation on City's Liability. City shall be liable for the cost of repair (or if repair is not feasible, replacement) to damaged Communications Facilities and Licensee Poles proximately caused by the willful misconduct of City or its employees. City shall be liable for the cost of repair (or if repair is not feasible, replacement) to damaged Communications Facilities and Licensee Poles proximately caused by the negligence of City or its employees. Notwithstanding the foregoing Subsection 19.3 and Subsection 19.3, City's total liability under this Agreement shall be limited to the aggregate Quarterly Fees paid by Company to City in the calendar year in which such liability arises, and City shall not be liable to Company for any indirect or consequential damages in connection with this Agreement.

19.4 Waiver of Punitive and Consequential Damages. Both parties hereby waive the right to recover special, punitive or consequential damages from the other party in connection with this Agreement; however, this waiver shall not limit or apply to Company’s obligation to provide insurance under Section 21, Company’s indemnity obligations under Section 18 or Company’s obligation to provide security under Section 20.

19.5 No Waiver of NRS Chapters 41 and 268 Protections. Notwithstanding anything to the contrary in this Agreement, City does not waive the rights and protections afforded the City under NRS Chapter 41 or NRS Chapter 268.

The terms of this Section 18 shall survive the expiration, completion or earlier termination of this Agreement.

20. Security for Performance. As security for compliance with the terms of this Agreement and applicable provisions of the HMC and the Standards Manual, Company shall comply with the security requirements set forth in the Standards Manual.

21. Insurance; Minimum Scope and Limits. Company shall procure and maintain, and cause its contractors to procure and maintain, at all times during the Term and until all of their obligations under this Agreement have been discharged, insurance identified in this Section and the Standard Manual. Company shall provide coverage with limits of liability not less than those stated below. The limits may be met by a combination of primary and excess or umbrella insurance. The policies, excluding workers’ compensation and employers’ liability, shall be endorsed to include City and its council members, officers, and employees as additional insureds with respect to liability arising out of activities performed by, or on behalf of Company, including completed operations and vehicles owned, leased, hired or borrowed by Company.

21.1 Commercial General Liability insurance – Occurrence Form

Each Occurrence:	\$1,000,000
Products – Completed Operations Aggregate:	\$1,000,000
General Aggregate:	\$2,000,000

21.2 Commercial Automobile Liability

Combined Single Limit:	\$2,000,000, including bodily injury and property damage for any owned, leased, hired, and borrowed vehicles used in the performance of this Agreement.
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21.3 Workers’ Compensation and Employers’ Liability

Workers’ Compensation:	Statutory
Employers’ Liability:	
Each Occurrence:	\$1,000,000
Disease/Employee:	\$1,000,000
Disease/Policy Limit:	\$1,000,000

22. Notices.

22.1 Method of Providing Notice. All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid courier service, addressed to the City as specified in the Standards Manual and otherwise addressed to Company as follows:

If to Company:
[COMPANY'S LEGAL NAME]
Attn: _____

_____, _____
Email: _____
Facsimile: _____

22.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, on the third business day after the date of mailing if mailed by certified mail, or on the date officially recorded as delivered according to the record of delivery if delivered by courier. Each Party may change its contact information for purposes of this Agreement by giving written notice to the other party in the manner set forth above.

23. Default and Cure.

23.1 Default and Notification. This Agreement is granted upon each and every condition herein and each of the conditions is a material and essential condition to the granting of this Agreement. Except for causes beyond the reasonable control of Company, and subject to Subsection 23.2 below, if Company fails to comply with any of the material conditions and obligations imposed hereunder, if such failure continues for more than thirty (30) days after written demand from City to commence the correction of such noncompliance on the part of Company, and if a Company representative and the City Manager have met to discuss the noncompliance (provided such a meeting is requested in writing by Company within ten days after receiving the written demand), City shall have the right to revoke and terminate this Agreement and/or a particular License Authorization in addition to any other rights or remedies set forth in this Agreement or provided by Law.

23.2 Cure Period. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under Company's control, the period of time in which Company must cure the violation shall be extended by the City Manager, for a period to be determined at City Manager's sole discretion and in writing, for such additional time reasonably necessary to complete the cure, provided that: (a) Company has promptly begun the process to cure; and (b) Company is diligently pursuing its efforts to cure in the City Manager's reasonable judgment.

24. Liquidated Damages.

24.1 Amounts. If Company fails to cure any noncompliance with the terms and conditions of this Agreement within the time allowed under Subsection 23.1 and Subsection 23.2, after City gives Company reasonable notice of such noncompliance and an opportunity to be heard by the City Manager, City may assess the following liquidated damages for such noncompliance:

24.1.1 Failure to comply with City’s non-discriminatory requirements concerning actual usage of the ROW or Municipal Facilities, including but not limited to any Company-caused defaults resulting in construction-delay claims against City: \$500.00 per day, for each day such failure continues.

24.1.2 Failure to comply with any other provisions of this Agreement, including but not limited to failure to provide in a reasonable timeframe data, documents, reports, or information to City, or to provide insurance or security for the performance of Company’s obligations hereunder: \$100.00 per day, for each day such failure continues after the cure period has ended.

24.2 Payment of Damages. Any liquidated damages assessed pursuant to this Section 24 shall be due and payable by check mailed or delivered to the Director of Finance, at the address provided for in Section 22, not later than thirty (30) days after City provides Company with written notification of the assessment.

24.3 Remedy not Penalty. Company agrees that any failures specified in Subsection 24.1 shall result in injuries to City and its citizens and institutions, the compensation for which would be difficult to ascertain and prove, and that the amounts specified in Subsection 24.1 are liquidated damages, not a penalty or forfeiture.

25. Assignment.

25.1 Permitted Assignments. This Agreement shall not be Assigned or Transferred by Company without the express written consent of City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Assignment or Transfer of the rights and obligations of Company to an Affiliate or to any successor in interest or entity acquiring more than fifty percent (50%) of Company’s stock or assets shall not require the consent of City, provided that: (a) any such assignee or transferee assumes all of Company’s obligations hereunder, including all obligations and/or defaults under this Agreement occurring prior to the Assignment or Transfer (whether known or unknown), and provides City with written notice of acceptance of that assumption or the effectiveness of that assumption by operation of law; (b) the assignee or transferee provides City with a copy of an appropriate certificate of public convenience and necessity from the PUCN; and (c) the assignee or transferee has a valid City business license.

25.2 Affiliate. For the purpose of this Section, “Affiliate” means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in Company; (b) each person or entity in which Company has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls Company. An Affiliate shall in no event mean any creditor of Company solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, Company.

25.3 Assignment or Transfer. “Assignment” or “Transfer” means any transaction in which: (a) any ownership or other right, title or interest of more than fifty percent (50%) in Company or its Facilities is transferred, sold, assigned, leased or sublet, directly or indirectly, in whole or in part; (b) there is any change or transfer of control of Company or its Facilities; (c) the rights and/or obligations held by Company under this Agreement are transferred, directly or indirectly, to another party; or (d) any change or substitution occurs in the managing general partners of Company, if applicable. An “Assignment” shall not include a mortgage, pledge or other encumbrance as security for money owed, nor shall it include, the use of the Facilities by third parties or proper placement of Facilities owned by a Qualified Service Provider pursuant to a License Authorization.

26. Miscellaneous Provisions. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

26.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

26.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

26.3 Contacting Company. Company shall be available to the employees of any City department having jurisdiction over Company’s activities as provided in the Standards Manual. City may contact the network control center operator at telephone number (____) ____ - ____ regarding such problems or complaints.

26.4 Governing Law. This Agreement shall be governed and construed by and in accordance with the laws of the State of Nevada, without reference to its conflicts of law principles.

26.5 Forum. All actions between any parties to this Agreement that arise from or relate to this Agreement shall be initiated in the courts of Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada. Company agrees that it shall not initiate an action that arises from or relates to this Agreement against City in any other jurisdiction. Company irrevocably agrees to submit to the exclusive jurisdiction of the courts located in Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada over any dispute or matter that arises from or relates to this Agreement.

26.6 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

26.7 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party’s respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

26.8 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties with the same formality as this Agreement.

26.9 No Waiver. A party shall not be excused from complying with any of the terms or conditions of this Agreement because the other party does not, on one or more occasions, insist upon or to seek compliance with any such terms or conditions or because of any failure on the part of a party to exercise, or to delay in exercising, any right or remedy hereunder. Nor shall a party's single or partial exercise of a right or remedy or failure to require full performance from the other party preclude a party's right to exercise its rights and remedies or enforce each and every provision in this Agreement.

26.10 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

26.11 Public Records. City is a governmental entity and subject to the public records Laws and regulations set forth in chapter 239 of the NRS and NAC. Therefore, City's records are public records and are subject to inspection and copying by any person unless there is an applicable exception or the record is declared by applicable Law to be confidential. Company is advised, and acknowledges, that the Agreement and documents provided in connection with this Agreement become a public record and, unless the information is declared by applicable Law to be confidential or is otherwise excluded from the public records disclosure requirements, may be subject to inspection and copying. If Company believes any information it submits should be considered confidential or proprietary in nature, or contains trade secrets (as defined in NRS 600A.030), Company shall mark the page or pages that contain such information "CONFIDENTIAL," shall provide a summary sheet identifying each and every page that contains information so marked, shall represent in writing on that sheet that protections exist under applicable Law to preserve the integrity, confidentiality and security of the information, and shall specify with particularity the factual and legal basis thereof. If Company fails to do all of the foregoing, such information shall be deemed to not be confidential. If City receives a public records request that applies to this Agreement (either specifically or otherwise), it will analyze the documents provided in connection with this Agreement to see if the information so marked may legally be withheld from inspection and copying. City takes no responsibility and is not liable for release of (1) any information not so marked and summarized or (2) any information that is so marked and summarized in the event that City determines in its sole and absolute discretion that City must provide the information because an applicable exception does not apply or the information is not declared by applicable Law to be confidential.

26.12 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

26.13 No Third-Party Beneficiaries. Except for City Indemnitees who are intended beneficiaries of Company's obligations in Section 18, nothing expressed or implied in this Agreement is intended to create for the public, or any member thereof, or any person not a party to this Agreement, a third-party beneficiary right, interest or remedy, or to authorize any such person to maintain a suit for personal injuries or property damage pursuant to any term, provision, condition, undertaking, warranty, representation, or agreement contained in of this Agreement.

26.14 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms. When followed by an example, the words “include,” “includes,” and “including” are to be read as if they were followed by the phrase “without limitation.”

26.15 Effect of Acceptance. Company: (a) accepts and agrees to comply with this Agreement and all applicable federal, state, and local laws and regulations; (b) agrees that this Agreement was granted pursuant to processes and procedures consistent with applicable law; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against City that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that City had no power or authority to make or enforce any such provision, condition or term.

26.16 Time is of Essence. Time is of the essence with regard to the performance of all of Company’s obligations under this Agreement.

26.17 Counterparts. This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of documents or signature pages bearing original signatures, and executed documents or signature pages delivered by telefax or facsimile or by e-mail transmission of an Adobe© file format document (also known as a PDF file), shall, in each such instance, be deemed to be, and shall constitute and be treated as, an original signed document or counterpart, as applicable.

26.18 Relationship of the Parties. It is understood that the contractual relationship between City and Company is such that Company is not an agent of City for any purpose and City is not an agent of Company for any purpose.

26.19 Performance of Acts on Business Days. Any reference in this Agreement to time of day refers to local time in Nevada. All references to days in this Agreement refer to calendar days, unless stated otherwise. Any reference in this Agreement to a “business day” refers to a day that is not a Friday, Saturday, Sunday or observed as a holiday by City. If the final date for payment of any amount or performance of any act required by this Agreement falls on a Friday, Saturday, Sunday or holiday, that payment is required to be made or act is required to be performed on the next business day.

26.20 Standards Manual; Headings; Exhibits; Cross References. The Standards Manual and all Exhibits, and any attachments thereto, are incorporated into and made a part of this Agreement. The section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement. All references in this Agreement to Sections, Subsections and Exhibits are to Sections, Subsections and Exhibits in this Agreement, unless otherwise specified. Unless the context otherwise requires, the singular includes the plural and the plural includes the singular and the neuter includes the feminine and masculine.

26.21 Independent Contractor. Neither Company nor City is, nor will they be deemed to be, for any purpose, the agent, representative or employee of the other by reason of this Agreement.

Nothing in this Agreement or any agreement or subcontract by Company will create any contractual relationship between Company's employee, agent, or contractor and the City.

26.22 No Property Interest Acquired. Nothing in the awarding of this non-exclusive franchise, the authorization to use ROW or the execution of this Agreement shall in any way be construed as establishing a property interest or any other entitlement other than to permit Company to enforce the terms of this Agreement.

26.23 Authority. Each party has taken all actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery of it, and the performance contemplated in it. The individuals executing this Agreement state and acknowledge that they are authorized and empowered to do so on behalf of the party so designated.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed as of the Effective Date.

CITY:

CITY OF HENDERSON

By: _____
RICHARD A. DERRICK
City Manager/CEO

Date of City Council Action: _____

ATTEST:

Approved as to Content:

SABRINA MERCADANTE, MMC
City Clerk

ED MCGUIRE
Director of Public Works

Approved as to Funding:

Approved as to Form:

JIM MCINTOSH
Chief Financial Officer

NICHOLAS G. VASKOV
City Attorney

COMPANY:

<Insert Company's Legal Name>

By: _____

Printed Name: _____

Title: _____